

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

**Present: S.D.Ukkali
Ombudsman
Case No.OMB/B/G-52/09/7710
Dated 28.01.2010**

Smt. Sharada ,
W/o Lakshminarasimhaiah
No.38, 14th Cross,
Veerabhadranagar,
Banashankari 3rd Stage,
Bangalore-560085

.. **Complainant**

Vs

1. Bangalore Electricity Supply Company Ltd., (BESCOM)
represented by its
Asst. Executive Engineer (Ele),
S-9 Sub Division,
Banashankari ,
BANGALORE-560070

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

.. **Respondents**

I. This is an appeal complaint filed by the above named Complainant under the provisions of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 directed against the Order dated 31.12.2008 passed by the 2ND Respondent in file No. UAP/17/2008/2724.

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

a) An electrical connection was extended to the premises of Late Smt.Narasamma with RR No.BS5LG 2335 during 1995. Late Shri Gujjarappa, the husband of Late Smt.Narasamma had given a General Power of Attorney to Smt.Sharada, wife of Shri

Lakshminarasimhaiah on 31.12.1993. It is stated that by virtue of this General Power of Attorney, Smt.Sharada was authorized to deal with this electrical installation.

It is further stated that from the year 1995 meter readings were taken and bills were received by the Complainant and bills were regularly paid. During 2007, one Shri Govindaraj, Meter Reader informed the Complainant that the meter was not working properly. This meter was installed during April 2002 after removing the old meter. After Shri Govindaraj, Meter Reader informed that the meter was not working properly in 2007, bills were not rendered by the 1st Respondent. She gave a letter on 5.6.2007 to the 1st Respondent to check the meter of the installation. There was no response from the 1st Respondent. After a lapse of about 8 months, all of a sudden the Vigilance Authorities inspected the premises on 16.2.2008 and tested the meter and have drawn NC No.B 02649 with No.AEE/RSP-18/2008 dated 16.2.2008 and have taken the signature of her husband, Shri Lakshminarasimhaiah forcibly without explaining the reasons for improper working of the meter and without issuing any bills.

b) Based on the Vigilance Report No.SP/VG/AO/3545/07-08 dated 1.3.2008 and 3537 dted 29.1.2008 with detailed calculation sheet, the 1st Respondent claimed a back bill of Rs.41327/- (Rupees Forty One thousand and three hundred & twenty seven) only vide letter No.AEE/EL/29/AAO/295 dated 19.4.2008. The Complainant met the 1st Respondent and enquired about the heavy billing. As there was no response from the 1st Respondent, she did not pay the bill. Consequently, the Junior Engineer of BESCO disconnected this installation along with other five installations on 10.06.2008. The Complainant met the 1st Respondent again on 14.07.2008 and informed him in writing that she would pay the amount in installments from September 2008, upon which the power supply was restored. Since there was no relief from the 1st Respondent on the back billing charges, she enquired some people and as per their advice, she filed a complaint before the 2nd Respondent on 5.11.2008. Thereupon, the 2nd Respondent passed an order rejecting the request of the Complainant.

c) Aggrieved by this order, the Complainant has filed this appeal complaint before this Authority on 11.3.2009 praying for the following:

III.

PRAYER

1. To set aside the order passed by the 2nd Respondent in file No. UAP/17/2008/2724 dated 31.12.2008.
2. Set aside the Demand Notice dated 19.4.2008 issued by the 1st Respondent.
3. Grant such other relief/s as justified under the circumstances of the case.
4. Pending disposal of the appeal, the 1st Respondent to be restrained from proceeding with the recovery of the impugned claims in the interest of justice.

IV. MAINTAINABILITY

1. In terms of the Regulation 21.2 of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2004, the Complainant has to make a representation before the Ombudsman within 30 days from the date of receipt of the order of the Forum provided that the Ombudsman may entertain a representation after the expiry of the said period of 30 days if he is satisfied that there was sufficient cause for not filing within the said period. But as per the Form B prescribed for registering the complaint, it is noted that the prescribed time limit is said to be one year as per provisions of 11.3(a) and (b) of the Ombudsman Regulations. But 11.3(a) and (b) do not exist in the Regulations.

2. The order is passed on 31.12.2008 by the 2nd Respondent and the appeal complaint is filed on 11.03.2009 within one year. This appeal, as per the time limit prescribed in Form B, is maintainable.

V. Settlement by Agreement.

On the directions from this Authority, both the parties appeared and deposed on 22.4.2009, 15.06.2009 and 29.10.2009. . An opportunity by way of this office letter dated 29.10.2009 was extended to both the parties in terms of Regulation 20(1) of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2004 to explore the possibility of settlement by conciliation and agreement. The 1st Respondent vide his letter No.AEE(EL)/S9/AAO/SA/09-10/4069 dated 26.11.2009 has stated that although the Complainant was invited for conciliation as per the directions of the Ombudsman, the Complainant did not show any interest for conciliation. During the hearing, both the parties consented to get the meter tested by the 3rd party. The same was arranged.

VI. Discussions

Since the settlement was not possible, this Authority proceeded to pass an award.

a) Inspection and testing by 3rd Party

During his deposition on 15.06.2009, the 1st Respondent has stated that as per the directions given to him in the previous deposition, he contacted the Electrical Inspectorate for testing the meter of the Complainant and that he has been informed by the Inspectorate that they are not witnessing the testing of the meter these days and that the meter could not be tested in the presence of the officials of the Inspectorate. He requested this Authority to take up the matter with the Inspectorate for arranging witnessing of the testing of meter of the Complainant.

As there was a dispute that the meter was not showing correct readings, it was decided to arrange for a 3rd party meter testing and accordingly letter dated 15.06.2009 was addressed to the Chief Electrical Inspectorate, Bangalore to furnish a report on the following 3 issues after getting the meter tested:

1. What was the correct digit of the meter?

2. Whether the meter is recording correctly?
3. What is the present reading?

The Deputy Electrical Inspector, Bangalore West, J.C. Road has furnished his report dated 28.08.2009 (received in this office on 05.10.2009) that as per the directions of the CEI, the meter was tested in front of them on 05.08.2009 and report of testing is that

1. The meter is a five digit meter
2. The meter is recording properly
3. The reading on 5.8.2009 was 16288.1

b) Contention of the Complainant:

After narrating the details as stated at para II a, b & c, the complainant alleged that in spite of repeated approach the Respondent Licensee did not settle grievance and no action was taken to set right the meter, ultimately urged that she has not utilized so much of electricity of 4 digits and she doubted the details of the meter as the thousandth digit is not properly showing the reading and **that she doubted the correctness of the meter and was ready to get the meter tested by a 3rd party. Thereupon, the 1st Respondent and the Complainant were advised to get the meter tested by the 3rd party.**

c) Contention of the 1st Respondent, Shri Kemparaju:

In his deposition, the 1st Respondent has stated that this installation was inspected by the the AEE vigilance along with meter testing staff on 16.2.2008 and a report was issued that there was a discrepancy in the reading of the meter. On verification of the report, it is seen that the meter reading was 5 digit reading whereas the meter reading furnished by the meter reader was 4 digit one. He has further stated that the MT and vigilance staff have indicated that the meter was accurately recording and the 4 digit reading was being taken by the meter reader instead of 5 digit reading

and that the vigilance staff wrote a letter to his office to collect the difference of units on an average of 210 units per month. He has further stated that the amount towards difference worked out to Rs.41,327/- (Rupees Forty one thousand three hundred and twenty seven) only which also included the **back billing towards the unauthorized load connected at the time of inspection by the vigilance staff.** He has claimed that the sanctioned load to the complainant was 0.25 kW whereas the load connected on that day was 2.4 kW, which meant an unauthorized load of 2.15 kW was being used. He has further added that the vigilance findings vide report N.C.No.B No.02649 dated 16.02.2008 has been signed by Sri Lakshminarasimhaiah on behalf of the Complainant and that as per the calculation sheet, the back billing charges towards the unauthorized load was Rs.3402/- (Rupees Three thousand four hundred and two) only and Rs.37295/- (Rupees Thirty Seven thousand two hundred and ninety five) only was the difference of amount due to wrong reading of the meter and urged that the Complainant has to remit this amount.

d) Contentions of new 1st Respondent, Sri Shivasharana:

The new Asst.Executive Engineer, Sri Shivasharana, S-9 Sub Division, BESCO, Bangalore appeared on 29.10.2009 and deposed as 1st Respondent, as Shri Kemparaju was transferred.

In his statement, he stressed that the meter was having 5-digits instead of 4-digits and that the meter has been working alright as per the report of the Deputy Electrical Inspector, Bangalore(West) J.C.Road who visited the installation on 05.08.2009 and tested as third party in presence of both the parties. Therefore, he stated that the Complainant is liable to pay the back billing charges of Rs.37,925/- (Rupees Thirty seven thousand nine hundred and twenty five) only towards energy; charges plus Rs.3402/- (Rupees Three thousand four hundred and two) only towards the penalty for usage of unauthorized load to an extent of 2.15 kW.

On drawing his attention to the statement of readings furnished in the letter No.AEE(EI)/S-9/AAO/SA/5720-21 dated 23.3.2009 that there was discrepancy in the readings, he stated as follows in his deposition on 29.10.2009:

"I agree to the discrepancy in the readings that at Sl.No.6 the reading is observed to 1110 and the previous reading at Sl.NO.5 was 926, which means that the reading from the 100th slot at Sl.No.5 has gone to 1000th slot at Sl.No.6 after the meter completed the rotation. Similar situation of reading going to 10000th slot from the 1000th slot is not observed after Sl.No.47 and the Sl.No.48 it is recorded as 14716, a 5-digit reading and on 16.2.2008, the reading was 14716.4 and the reading on 5.8.2009 was 16288.1. There is no record earlier to reading Sl.No.48 for having recorded the readings for a smooth change from 1000th slot to 10000th slot. Before 1 (one) appears in the 10000th slot, the previous reading should have 9 in the 1000th slot. That has not happened in the readings observed.

My clarification for this discrepancy is as follows:

Since I am working in this subdivision from 15.07.2009, I am not aware of the previous happenings and the readings. On verifying the previous records, it appears that the reading furnished are not as per the actual readings of the meter till vigilance AEE inspected the installation. But on the day, I visited the installation along with the MT, AEE and Deputy Electrical Inspector on 05.08.2009, the meter was working correctly and the reading was 16288.1. However, loss has occurred to the BESCO till the correct reading was found out by the AEE Vigilance on 16.2.2008, as the consumer has utilized that much of energy. The Consumer has to pay the short claim amount raised by S-9 Sub Division of BESCO"

e) Observations and conclusions of the Vigilance Officer, BESCO Bangalore

The letters and calculation sheets mentioned at para II (b) from Vigilance Officer, BESCO, Bangalore addressed to the 1st Respondent were the basis for back billing. The observations of the Vigilance Officer are as detailed below:

1. Bill is not rendered from April 2007.
2. Meter is provided during April 2002.

3. From April 2002 to April 2007 only 3919 units are shown as utilized.
4. The reading on 16.2.2008 was 14716, which indicates that in 10 months, the units were 10797 units.
5. This consumption is stated to be not possible with connected load of 2.4 watts.
6. The meter was got tested by the M.T.Division and obtained confirmation regarding its accuracy.

Based on these observations and the consumption from April 2002 to April 2007, the Vigilance Officer arrived at the following conclusions:

1. A load of 2.4 kW cannot utilise 10797 units in 10 months. This consumption is accumulated from previous period.
2. From the day the meter was installed till the date of inspection for 70 months when the entire consumption was verified, it will work out on an average consumption of 210 units per month. It is presumed that this consumption is suitable for a connected load of 2.4 kW and this load was being utilized from the day the meter was changed and this was not noticed by the concerned officer.
3. The meter reader used to furnish only estimated readings and ultimately during April 2007, when actual consumption was observed, the meter reader has stopped issuing the bills. For lapse on the part of the meter reader, there is a loss to the Company to the extent of Rs.47,848/- (Rupees forty seven thousand eight hundred and forty eight) only.
4. The sanctioned load was only 250 watts but though connected load was found to be 2.4 kW for 70 months, the back bill was prepared for 2 years only, quoting wrongly, the provisions as 4.22 (d) of Electricity Supply Code.
5. The 1st Respondent was advised to obtain for further action the explanation from the Meter Reader/Junior Engineer/Assistant Engineer who were responsible for

loss to BESCO by not rendering the bills for 10 months and not reading the meter properly.

6. The 1st Respondent was asked to revise the demand and collect from the consumer the back billing amount indicated in the provisional bill enclosed cited above, at para II (b) and has asked the 1st Respondent to restrict the bill for unauthorised usage of load for 2 years only instead of 70 months, whereas in case of energy charges, the bill is worked out for 70 months instead of restricting to 2 years only.

VII. Discussion, Analysis and Findings:

The back billing consists of two components:

(a) Back billing charges due to furnishing of fictitious readings by the Meter Reader of Respondent Licensee to an extent of Rs.37,925/-.

(b) Back billing charges due to levy of penalty for using unauthorized load to an extent of Rs.3402/-.

Out of these 2 Components mentioned above, this Authority has jurisdiction only on Component VII(a) of back billing charges of Rs.37,925/-. This Authority has no jurisdiction on the Component VII(b) related to back billing charges of Rs.3402/- on the grounds that this component is falling within the purview of Section 126 of the Electricity Act 2003 and is excluded from the jurisdiction of the 2nd Respondent as per Regulation 2(g) of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations 2004. Hence, this Authority has no jurisdiction and offers no comments on this portion of the back billing charges.

This Authority proceeds further to pass award in case of VII(a) only as follows:

VIII. Based on the facts and above mentioned discussions, the following issues emerge:

1. Whether the Complainant was responsible for causing loss to BESCO and what was the cause for abnormal consumption as found out on 28.2.2008 by the Vigilance Officer, BESCO, Bangalore?
2. Whether the Complainant is liable to pay the back billing charges?
3. What relief the Complainant is entitled to?

Issue 1:

The finding on this issue is that the Complainant was not responsible for the loss caused to BESCO as per the report from the Vigilance Officer, BESCO, Bangalore who held that the cause for the accumulated reading was due to furnishing of fictitious readings by the Meter Reader of the Respondent Licensee and has stressed for action on the employees of the Licensee for causing loss to an extent of Rs.47,848/-.

Issue 2:

The finding is that the Complainant is liable to pay a reasonable back billing charges on the grounds mentioned below:

a) In terms of the provisions of 27.01 of the Conditions of Supply of Electricity of Distribution Licensee in the State of Karnataka, the Complainant is liable to pay the back billing charges as the 3rd Party has found meter to be correctly working and is having 5 digits.

b) In the terms of provisions 4.22 (d) of KERC (Electricity Supply) Code 2004 even though the Complainant is not at fault. **" If the Licensee establishes that it**

has under charged the Consumer either by review or other wise, the Licensee may recover the amount undercharged from the Consumer by issuing a bill and in such cases at least 30 days shall be given for the Consumer to pay the bill"

Issue 3:

The finding is that the Consumer is entitled for a relief by billing the energy charges for 2 years only on the following 2 grounds:

a) The reasonability of billing is provided in the billing procedures dealt at 4.13 of KERC (Electricity Supply) Code 2004 which says that ***"The Licensee shall not recover any arrears after a period of 2 years from the date when such sum became first due, unless such sum has been shown continuously in the bill as recoverable as arrears of the charges of electricity supplied."***

b) In agreement with these provisions, the Vigilance Officer in his letter dated 29.2.2008 at para (4) has stated that the sanctioned load for the installation was 250 watts and the connected load was 2.4 kW. **Even though from the facts and figures it is established that this unauthorized load was utilised for 70 months, but the bick bill was limited to 2 years in terms of provisions of KERC (Electricity Supply) Code. Strangely, in case of energy charges while sending calculation sheet, he has not restricted the bill to two years.** The 1st Respondent has failed to apply his mind and claim the energy charges for 2 years only. Hence, his notice dated 19.4.2008 has to fail.

IX. The two years energy to be billed works out as follows:

A) The energy billed during the previous two years

The reading as on 24.2.2008	3919
The reading as on 24.1.2006	<u>2641</u>
The energy billed	1278

B) The average energy consumption by taking 5 digits reading is worked out by the Vigilance Officer in his calculation sheet as follows:

Reading as on 16.2.2008	14716.4
Reading as on 01.04.2002	00000.0
Units consumed	14716
Units billed	<u>3919</u>
Units pilfered	10797
Average 210/month	

C) The two years energy to be billed

i) 2 years consumption on an average of 210 units/month	5040
ii) Energy already billed	<u>1278</u>
iii) Energy now to be billed	3762 units

The 2nd Respondent Forum though has held at para 4 of its Order that the loss to Respondent Licensee was due to the lapses by its employees, it has erred in not granting any relief to the Complainant.

X. Having regard to the facts and the circumstances of the case, this Authority passes the following Order:

XI.

ORDER

1. The 1st portion of the order of the 2nd Respondent is set aside and the demand notice dated 19.4.2008 from the 1st Respondent is also set aside.
2. Under the circumstances explained above, the back billing with normal rates giving monthly slab benefit for 24 months be claimed for 3762 units only instead of 10797 units.
3. The Complainant shall pay the bill within 30 days from the date the bill is served to her, failing which the 1st Respondent is at liberty to initiate action as per law for recovery of the amount.

(S.D.Ukkali)
Ombudsman

TO:

Smt. Sharada ,W/o Lakshminarasimhaiah, No.38, 14th Cross, Veerabhadranagar,
Banashankari 3rd Stage, Bangalore-560085

2. The Consumer Grievance Redressal Forum, BESCO, Central Stores Premises,
near ESI Hospital, Rajajinagar, Bangalore-560010

3. The Asst.Executive Engineer(Ele), BESCO, S-9 Sub Division, Bangalore-560070

4. The Managing Director, BESCO 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. Director(Tariff)

10. Deputy Director(Legal)

11, OCA

