

Before the Ombudsman
Karnataka Electricity Regulatory Commission
Bangalore

Present: S.D.Ukkali
Ombudsman
Case No.OMB/M/G-79/10/8350
Dated 02.06.2010

Shri K.Shivaram Hegde,
"Shivagiri"
Venoor,
Belthangadi Taluk,
Dakshina Kannada District
(Represented by Sri

..

Complainant

Vs

1. Mangalore Electricity Supply Company Ltd., (MESCOM)
represented by its
Assistant Executive Engineer (Ele),
O & M Sub Division,
MESCOM
Belthangadi,
Dakshina Kannada District.

2. The Consumer Grievance Redressal Forum, (CGRF)
MESCOM Corporate Office,
Paradigm Plaza, A.B.Shetty Circle,
MANGALORE

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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 against the Order dated 20.01.2010 passed by the 2ND Respondent in file No. ^a $\mathbb{A} \ll$, P/A/U/A/P/A.P/E. ^a \mathbb{A} /17/09-10.

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

1. The installation bearing R.R.No.BVL 13 was serviced on 1.8.1974 in the name of Sri Late Narayan Hegde with a sanctioned load of 3 KW under LT-2(a) tariff. The Complainant was utilizing the power regularly and was also paying the bills promptly. All of a sudden, there was a back billing of Rs.11,528.00 in addition to the regular electricity bill. On an enquiry with the office of the 1st Respondent, it was informed vide letter No.2863 dated 15.09.2009 that Rs.11,405/- was towards audit short claim for the period November 2005 to December 2007 i.e. for 26 months since the meter was presumed to be not recording (MNR).

2. The Complainant submitted his objection in writing on 25.9.2009, objecting for this audit short claim. The 1st Respondent vide his letter No.3085-87 dated 5.10.2009 rejected the objection and claimed that the demand made by the department was correct.

3. In view of the above, the Complainant filed a complaint with the Public Complaint Cell of the General Manager, MESCOM. In response to this, the AEE, MESCOM, Belthangadi vide his reply dated 12.11.2009 again reiterated that the claim made by the department was correct and that the amount claimed was to be paid by the Complainant. In case he was not satisfied, he could file an appeal before the higher authorities after paying 1¹/₃ of the amount.

4. Not satisfied with the above direction, the Complainant filed a complaint before the 2nd Respondent in the prescribed format.

The 2nd Respondent after hearing both the parties has passed an order stating that the back billing should be revised on the average as per readings for the months of 09/05, 10/05 and 11/05 instead of 08/05, 9/05 and 10/05 as has been done by the 1st Respondent while preferring the back bill. It has further directed that bill should be issued from 1/8 till the date of changing of meter i.e. 31.10.2008 at the same average.

One of the Members, Sri Pradeep Hebbar, not agreeing with the Chairperson and the other Member, has passed a dissent order disagreeing with the opinion of the Chairperson and the other Member.

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

III.

PRAYER

1. To set aside the back billing demand for 26 months amounting to Rs.11,405.00 as it is against Regulations 29.03, 27.04(i) and 27.04(vii).
2. To set aside the direction given vide letter No. α μ κ 1PA/UA/PA.P/E. α μ 17/09-10 $\text{\textcircled{C}}$ $\text{\textcircled{E}}$ $\text{\textcircled{A}}$ $\text{\textcircled{P}}$ 20.1.2010 to collect the charges for 35 months on an average basis as it is against Regulation 29.08.

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/M/G-79/2010/8024 dated 06.04.2010. The 1st Respondent, Sri H.Ratnakar Pai and Sri C.A.Rajagopal Hegde, authorized representative for the Complainant appeared and they were heard on 31.05.2010. 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 under:

1. The MESCOM company entrusted the audit work of LT-2 installations for the period January 2006 to December 2007 to M/s.Jadeja Siddappa & Co. of Shimoga of Belthangadi Sub Division.

2. During the said period, 66,792 domestic installations were audited and audit short claim was raised to the tune of Rs.7,82,481.

3. The installation of the Complainant was one of the installations audited and a report was received from the auditors to collect a short claim of Rs.11,405/- for the period from November 2005 to December 2007 based on an average 177 units/month. This audit short claim was based on the presumption that the installation was MNR.

1.	08.05	175 units
2	09.05	166 units
3	10.05	192 units
4.	11.05	104 units

Out of these 4 months, the consumption for the month of November was only 104 units and the Auditors did not consider it since it was very low consumption while working out the average. But they have considered the consumption of August, September and October which worked out to 177 units.

4. The 2nd Respondent while passing orders have ordered that while calculating the average the preceding 3 months only should be considered.

5. Accordingly, The average of September, October and November 2005 works out to 154 units. Based on this average, a short claim of Rs.9015.00 was communicated to the consumer

6. He claims that the audit short claim by the auditors is in order and the changes in the back billing also have been made as per the orders of the 2nd Respondent. As per

provisions of 27.04 of ES&D Code 2000-01 the order passed by the 2nd Respondent is correct and the consumer has to pay the amount.

7. Therefore, the request of the Complainant be rejected and he be directed to pay the audit short claim of the auditors amounting to Rs.9015.00 with interest to avoid further complications.

B. Per contra, the representative of the Complainant argues as under:

1. The electricity was regularly being utilized by his father and his elder brother (the Complainant) and they were making regular payments. All of a sudden, a notice of back billing for Rs.11,405/- along with the regular bill on 9.9.2009 was received. When enquired, it was informed that this back billing was claimed because of the meter not recording from October 2005 to December 2007. No proof of inspection was produced, but MNR was based on presumption only.

2. The Complainant constructed a new house in 2005 and shifted to new house in the beginning of 2006. This fact was also evident from the low consumption recorded after the new meter was installed.

3. The Complainant addressed a letter dated 24.9.2009 to the AEE, Belthangadi explaining him that it was the duty of the Company to maintain the meter in good condition and that there was no fault of his. He requested for withdrawal of the claim for back billing. The Complainant received communication on 5.10.2009 wherein it was explained that the amount claimed was not a back billing and that it was a audit short claim and that the Complainant was liable to pay.

Not satisfied with this reply, the Complainant filed a complaint with the 2nd Respondent, MESCOM, Mangalore on 13.10.2009. The 2nd Respondent after conducting hearing passed an order. There were two issues

a) The issue was pertaining to the average of 3 months while calculating the back bill. The AEE, MESCOM, Belthangady had picked high 3 months consumption and had calculated the monthly average instead of calculating the monthly average based on the preceding 3 months consumption. This mistake was set right by the 2nd Respondent, MESCOM, Mangalore and the request was granted

b) The other issue was that the back bill was claimed for 26 months but as per rules if the meter is MNR, the company should back bill for 6 months only. But 2nd Respondent upheld the MESCOM's plea.

Not satisfied by the 2nd part of the order, the Complainant has filed this petition before this Authority.

The Complainant is paying the regular bill except the disputed amount. **In the statement No.1709-10 dated 20.1.2010 the AEE, Belthangady before the 2nd Respondent has stated that even though as per COS 27.04 for MNR meters, based on 3 months average the back bill was to be collected for 6 months, since this was an audit short claim, it was demanded for 26 months.** From this statement given before the 2nd Respondent, the AEE Belthangadi it is clear that the Complainant is liable to pay back billing charges for 6 months only based on the MNR. Since this is a MNR claim and the bill has to be claimed accordingly, it is not understood as to what was the audit short claim the AEE, Belthangadi is referring to. If this audit short claim was to be collected, it was to be based on MNR only and nothing else. This audit short claim is bound by the rules of MNR. Therefore, an order may kindly be passed restricting the claim only to 6 months based on the average already determined by the 2nd Respondent.

VI. FINDINGS

1. The declaration of the meter not recording (MNR) is based on the presumption that sub-normal consumption was observed by the auditors.

2. The sub-normal consumption is due to non-use/less use of the electricity by the Complainant due to construction of a new house.

3. The Complainant has quoted the provisions of 27.04(i), 27.04(vii) and 29.03 which read thus:

"27.04(i): During the inspection/testing by the Licensee, if the meter is found to be not recording (for any reasons other than tampering) the Consumer shall be billed for a period of not more than six billing months preceding the date of inspection /testing and up to the date of replacement or rectification of the meter on the basis of the average energy consumption of the immediately preceding 3 (three) months when the meter was recording properly in addition to demand/fixed charges."

"27.04(vii): All meters not recording shall be replaced or repaired within a maximum period of 15 days from the date of report by the Consumer/employees of the Licensee. IN case the same is not done, the Licensee shall pay a rebate of 5% on the monthly energy bills issued as per the applicable clauses of the above table after the expiry of the above 15 days period till the meter is replaced."

"29.03: Supplemental claims: For preferring the supplemental claim, the Licensee shall serve a provisional Assessment order with 15 days' notice to the Consumer to file his objections, if any, against the provisional Assessment order on account of faulty meter or short claims caused due to erroneous billing and obtain his reply. After considering the objections of the Consumer, the Licensee shall issue the final order. The Consumer shall be intimated to make the payment within 15 days of the date of information, failing which, the power supply to the installation shall be disconnected and such amount shall be deemed to be arrears of electricity charges. The Licensee shall indicate in the final order the provisions of K.E.R.C. (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004."

It is observed that the claims made by the 1st Respondent are not in tune with the above provisions and therefore is not sustainable and the 2nd Part of the order of the 2nd Respondent also needs to be set aside.

However, keeping in view that the Complainant himself has volunteered for six months back billing with monthly average of 154 units of preceding 3 months and having regard to the facts of the case, the following order is passed.

VII.

ORDER

1. The short claim demand of Rs.11,405/- from the 1st Respondent is set aside.
2. The 1st portion of the order of the 2nd Respondent is upheld and the 2nd portion is set aside.
3. A short claim for 6 months based on average consumption of 154 units per month be demanded from the Complainant. The Complainant shall pay the same within 30 days after the receipt of the demand notice, failing which the Complainant is liable to pay interest at the usual rate of MESCOM Licensee.

(S.D.Ukkali)
Ombudsman

1. Sri K.Shivaram Hegde, "Shivagiri" Venoor, Belthangadi Taluk, Dakshina Kannada District.
2. Consumer Grievance Redressal Forum, MESCOM, Paradigm Plaza, A.B.Shetty circle, Mangalore
3. The Asst. Executive Engineer, O & M Sub Division, MESCOM, Belthangadi, Dakshina Kannada District
4. The Managing Director, MESCOM, Paradigm Plaza, A.B.Shetty Circle, Mangalore.
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

