



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/M/G-148/2013/249
Dated 31.07.2013

Shri A.P.Raghavendra,
 Coffee Planter,
 "Gokula" Estate,
 Bettadamane Post,
 Gonibeedu Hobli,
MUDIGERE TALUK
 Chikkamagalur District
(represented by Advocate, Shri C.N.Sangolli)

.. Appellant

Vs

1. Assistant Executive Engineer (EI),
 O & M Sub Division,
 MESCOM,
MUDIGERE,
 Chickmagalur District

2. The Chairperson,
 Consumer Grievances Redressal Forum (C.G.R.F)
 MESCOM Corporate Office,
 Paradigm Plaza, A.B.Shetty Circle,
MANGALORE-575001

.. Respondents

1. This is an appeal under clause 21.2 Of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 against the order passed by the Consumers Grievance Redressal Forum, MESCOM, Mangalore (hereinafter referred to as the 2nd Respondent) vide No 11A/UA/P.E. 22/12-13 09.04.2013 with respect to raising of two energy bills by the Assistant Executive Engineer, O & M Sub-Division, MESCOM, Mudigere (hereinafter referred to as the 1st Respondent) against the Appellant for Rs.1,72,387/- dated 02.06.2011 and another bill for Rs.17,71,104/- dated 08.11.2011 in respect of installation bearing R.R.No.IP-225. Aggrieved by the impugned order, the Appellant has submitted his case as under:

2. The Appellant is an electricity consumer of MESCOM bearing R.R No I.P-225. The Appellant was regularly paying electricity charges to MESCOM. Due to the defect in the meter, the 1st respondent under the guise of repairing the meter removed the existing meter and installed a new meter KX1 bearing RR No. 73134976. The said meter was also found to be defective and, therefore, the 1st Respondent removed the new meter and gave direct power connection to the installation. The Appellant was given to understand that electricity dues up to 31.03.2003 for Irrigation Pump Sets had been waived by the government, but surprisingly the 1st Respondent issued a bill for Rs.26,064/- and pressured the Appellant to pay this amount. The 1st Respondent obtained a cheque for the said amount and later he came to know that this amount had been collected for repairs of the transformer. Though Government has written off the dues of I.P sets up to 31.03.2003 vide G.O No EN44 PSR/2004 dated 21.02.2004, the 1st Respondent sent a post card to the Appellant mentioning the arrears as Rs.1,72,387/- and also unlawfully disconnected power supply to his installation on 26.08.2009. There is a G.O which says that electricity should not be stopped to the I.P sets for default of payment of arrears. Without properly calculating the consumption charges, the 1st Respondent issued a demand according to his whims and fancy. Aggrieved by disconnection, the Appellant approached District Consumer Dispute Redressal Forum, Chikkamagalur which came to be dismissed on 09.08.2010. Aggrieved by the Forum's order, the Appellant preferred an appeal before the Karnataka State

Consumer Dispute Redressal Commission vide appeal No 3878/10 and that appeal also was dismissed holding that the matter in dispute should be decided by the Electrical Inspector designated. In obedience to the said order, the Appellant approached the Electrical Inspector and the Electrical Inspector has not disposed the case till today. The Appellant also approached the 2nd Respondent seeking justice and the 2nd Respondent has dismissed the complaint. The Appellant, hence, prayed this Authority to set aside the order passed by the 2nd Respondent and to allow his complaint.

3. The 1st Respondent's comments were called vide letter No OMB/M/G-148/2013/192 dated 09.05.2013.

4. In his comments vide letter dated 15.05.2013, the 1st Respondent denied the Appellant having paid the power charges regularly and also denied MESCOM having removed the meter and installing new meter and also denied the new meter having become defective and, hence, MESCOM giving direct connection to the Appellant's installation. The 1st Respondent admitted Government having issued orders waiving off Irrigation Pump set dues of farmers up to 31.03.2003 and further clarified that the bill issued to the Appellant for Rs.26,064/- related to the period from 01.04.2003 to 01.11.2003 for 35 HP at minimum charges as prescribed under the law. The 1st Respondent admitted the Appellant having paid Rs.25,000/- through cheque on 12.02.2009, but denied transformer supplying power to the Appellant's installation having been dead. The 1st Respondent denied having repaired the transformer after the Appellant paid Rs.25000/-.

5. The 1st Respondent in his statement of objections admitted having sent a post card demanding arrears of Rs.1,72,387/- from the Appellant for the period from 01.04.2003 to 01.03.2010, but denied having disconnected power supply to the I.P set on 26.08.2009 and confirmed having disconnected power to the I.P set on 07.02.2008. The 1st Respondent submitted that the grounds urged by the Appellant

were not tenable and there were no merits in the appeal and, hence, prayed this Authority to reject the appeal.

6. The case was taken up for hearing on 12.07.2013. On behalf of the Appellant, Shri C.N Sangolli, Advocate was present and sought time to submit his arguments and, hence, time was granted. On behalf of the 1st Respondent, the Assistant Executive Engineer(EI) Mudigere Sub-Division was present and the case was adjourned to 23.07.2013. On 23.07.2013, Advocate Shri C.N Sangolli's Junior appeared for the Appellant and filed written arguments. The Appellant, who was present during hearing, also made some oral submissions. The Assistant Executive Engineer(EI) Mudigere Sub-Division, Shri Anantha Ramu, was present and put forth his arguments. Arguments from both sides got concluded on 23.07.2013.

7. The Advocate for the Appellant requested this Authority to treat the appeal memo as written arguments. The Appellant in his arguments reiterated the submissions made in the appeal memo.

8. The 1st respondent submitted that the Assistant Executive Engineer(EI) on 07.02.2008 had sent a letter to the Appellant that he (Appellant) owed Rs.1,12,029/- to MESCOM vide letter No 3265 dated 07.02.2008 and also to pay the said amount within 15 days. These arrears related to the period between 01.04.2003 to 07.02.2008. The Appellant did not pay the bills and the 1st Respondent, for non payment of the bills, disconnected power supply on 26.08.2009. Aggrieved by the disconnection, the Appellant approached District Consumer Dispute Redressal Commission, Chikkamagalur. Before the Forum, he submitted that Government of Karnataka had waived off electricity arrears in respect of Irrigation Pump sets and, hence, he was not required to pay the electricity charges. The District consumer Dispute Redressal Commission dismissed the complaint of the Appellant on 09.08.2010 and held that there had been no deficiency in service. Against this order, the Appellant filed an appeal before the State Consumer Dispute Redressal Commission, Bangalore in appeal vide 3878/10 and the State Commission also

dismissed the appeal dated 12.03.2012. In the order, the State Commission observed that the Appellant had not approached Electrical Inspector and directly filed the appeal before the State Commission and, hence, the Appellant should exhaust the legal remedies available under the Regulations before approaching the State Commission. In pursuance of the State Commission's order, the Appellant approached the Electrical Inspector for meter testing. The Electrical Inspector issued notice to both parties and conducted inspection of the premises in the presence of both parties. The Electrical Inspector, during inspection, observed that he was not competent to conduct meter testing and suggested the parties to engage the services of private agencies and, if they engaged private agency, he would stand as witness during inspection. Alternatively, he suggested that meter testing could be got done by the L.T Rating Division. These observations had been conveyed to the Appellant. The Appellant, however, did not approach the private agency for meter testing.

9. The 1st Respondent added that the Assistant Executive Engineer(EI) again inspected the subject installation along with MESCOM Vigilance Staff on 05.11.2012 and found the Appellant drawing power illegally from the service lines of MESCOM and, hence, levied a penalty of Rs.17,71,104/- for theft of power. The Appellant had not paid the earlier outstanding amount of Rs.1,72,387/-. Even the penalty levied by the vigilance was also not paid. The subject installation had been under disconnection from 22.02.2008. The Vigilance levied penalty for a period of 56 months for a connected load of 35 HP for a total of 5,24,160 units. Aggrieved by this, the Appellant filed a complaint before the 2nd Respondent on 02.06.2010. The 2nd Respondent dismissed the complaint on 09.04.2013. In the instant case, the installation was disconnected on 22.02.2008 and, hence, the period of theft was ascertainable and, hence, levied penalty for 56 months at twice the regular tariff i.e Rs.16,51,104/- as penal charges and Rs.1,20,000/- as compounding charges. The 1st Respondent received a letter from the Vigilance on 16.11.2012 and on the same day issued a demand notice to the Appellant. The Appellant did not pay this amount and

instead approached this Authority. Hence, he prayed this Authority to confirm the order passed by the 2nd Respondent.

10. Both parties were informed vide letter No.OMB/M/G-148/2013/219 dated 25.06.2013 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.

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

a) Whether the demand raised by the 1st Respondent for Rs.1,72,387/- and Rs.17,71,104/- against the Appellant is in conformity with the relevant regulations?

12. The Appellant, in his argument, submitted that he had been paying electricity bills regularly till the transformer connected to his installation got burnt. The 1st Respondent advised him to pay Rs.25,000/- for providing new transformer and, after paying Rs 25,000/, the 1st Respondent provided a new transformer. Again the 1st Respondent, issued a demand notice for Rs.1,72,387/- dated 01.03.2010 and the Appellant sought for details of the bill and the 1st Respondent did not give the details and, hence, he approached District Consumer Dispute Redressal Forum Chikkamagalur. But if we peruse the appeal memo and written arguments, we get altogether a different picture. In the appeal memo, the Appellant has taken a stand that Government of Karnataka had waived off electricity dues relating to Irrigation Pump sets and, hence, he is not liable to pay the dues. The 1st respondent has clarified that Government has waived off electricity dues relating to Irrigation Pump sets dues of farmers up to 31.03.2003 only and MESCOM's demand for Rs.26,064/- is towards monthly minimum charges for the period from 01.04.2003 to 01.11.2003.

This amount has been paid by the Appellant. Seen in the light of this clarification, the arguments of the Appellant that he has been exempted from paying the minimum charges as per Government orders has no merit as the Government waiver order was valid up to 31.03.2003 only and the demand raised by MESCOM pertains to subsequent period and, hence, the contention of the Appellant that he is not liable to pay monthly minimum charges is rejected.

13. Secondly, the Appellant has taken a contention that MESCOM has not calculated the arrears of electricity consumption charges (Rs.1,72,387/-) of the Appellant's installation as per the prescribed tariff but calculated the consumption charges according to its whims and fancy and even without issuing bills in a proper proforma and has illegally disconnected power supply. This argument, when seen in the light of 1st Respondent's submission, appears baseless and devoid of merit as the Appellant has failed to pay the electricity bills from 01.04.2003 till the disconnection of power i.e on 07.02.2008. It is surprising that in spite of the Appellant not paying the electricity bills for such a long period, MESCOM still obliged to supply power till 07.02.2008. This shows that the Appellant has not approached this Authority with clean hands as he has not settled the legitimate dues of MESCOM till today in spite of availing power to his Irrigation Pump Set for nearly 9 years. Hence, the second contention of the Appellant is rejected as it totally lacks merits.

14. The Appellant's third contention relates to the levy of penalty of Rs.17,71,104/- by MESCOM. The 1st Respondent, in his submissions, has clarified that MESCOM has levied a penalty of Rs.17,71,104/- based on Vigilance report which said that the Appellant had drawn power to his installation illegally from the service lines of MESCOM for a period of 56 months effective from 22.02.2008 and such drawl came to 5,24,160 units (for a connected load of 35 HP).


15. This appeal matter pertains to theft of power. As per Clause 2(g)(1)&(2) of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004, any grievance relating to levy of penalty under Section 135 to 139 of The Electricity

Act, 2003 has to be dealt by the Appellate Authority under Clause 44 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and, hence, this Authority does not get jurisdiction and, hence, no order is passed on this issue.

16. In the light of the above, the following order is passed.

ORDER

17. For the foregoing reasons, **the appeal is dismissed.**



(B.R. Jayaramaraje Urs)
Electricity Ombudsman

1. Shri A.P.Raghavendra, Coffee Planter, "Gokula" Estate, Bettadamane Post, Gonebeedu Hobli, Mudigere Taluk (represented by Shri C.N.Sangolli, Advocate)
2. The Assistant Executive Engineer, O & M Sub Division, MESCOM, Mudigere Taluk, Chikkamagalur District.
3. The Chairperson, Consumer Grievance Redressal Forum, MESCOM, Paradigm Plaza, A.B.Shetty Circle, Mangalore.
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