

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

**Present: S.D.Ukkali
Ombudsman
Case No.OMB/B/G-67/09/8442
Dated 17.06.2010**

M/s.Siddaganga Cements Pvt.Ltd.,
Shivakumarnagar, Sadarhally,
Chikkanayakanahally Taluk,
TUMKUR DISTRICT
(Represented by its legal counsel,
Shri A.V.Amarnathan)

.. Complainant

Vs

Bangalore Electricity Supply Company(BESCOM)
Represented by its

1. The Assistant Executive Engineer,
Chikkanayakanahally Sub Division
BESCOM,
Chikkanayakanahally

2. Executive Engineer,
O&M Division, BESCOM
B.H.Road,
TIPTUR

3. The General Manager(Tech)
BESCOM Corporate Office,
K.R.Circle,
Bangalore-560001

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

.. **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 19.08.2009 passed by the 4th Respondent in its file No.CGRF/57/2009/390-395.

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

1. The Complainant availed High Tension (HT) electricity for two installations of cement industry bearing RR No.CNHT-1 on 1/3/1985 and RR No.CNHT-2 on 17.10.1985 with a sanctioned contract demand of 250 KVA each.

2. Since the supply was erratic and not useful to the industry, as per the Complainant's contention, it surrendered both the power connections in the year 1996. But as per the version of the 1st Respondent, the installations were disconnected on 2.8.1996 and 26.8.1996 respectively for non-payment of arrears.

3. However, when the situation improved and Respondent Company offered good and uninterrupted supply of electricity, the Complainant applied for fresh HT power supply connections and were sanctioned vide letter dated 29.4.2005 by the Tiptur Exe.Engineer, BESCO.

4. After the power connection was sanctioned, the 1st Respondent raised an arrears of Rs.2,98,000/-(Rupees Two Lakhs Ninety Eight Thousand) for the earlier two dismantled installations, CNHT-1 and CNHT-2. The Complainant agreed to pay this amount and sought for grant of 6 monthly installments.

5. It is alleged by the Complainant that although the jurisdictional Engineer agreed for the same and the sent the file for approval to Corporate Office, BESCO, Bangalore. This office, while approving the installments, enhanced the arrears from Rs.2,98,000/-(Rupees Two Lakhs Ninety Eight Thousand) to Rs.5,76,627/- (Five Lakhs Seventy Six Thousand Six Hundred and Twenty Seven).

6. Surprised by this increase in arrears, the Complainant filed a Writ Petition before the Hon. High Court of Karnataka and the Hon. High Court vide its order directed the

Complainant to **pay Rs.2,98,000/- (Rs.Two Lakhs Ninety Eight Thousand)** in 6 monthly installments and gave time to file objections before the concerned authorities.

7. Accordingly, the Complainant paid the 6 monthly installments amounting to Rs.3,00,000/- (Rupees Three Lakhs) only and filed objections before the concerned authorities regarding the enhanced arrears.

8. The jurisdictional officer of BESCO did not appreciate the objections and rejected the Complainant's plea. The Complainant filed a complaint before the 4th Respondent seeking to redress the grievance..

9. The 4th Respondent had allowed the appeal of the Complainant on 18.9.2007. However, the 1st Respondent filed a Writ Petition in the High Court of Karnataka in WP 3908 of 2008 on the ground that the Members of the 4th Respondent had no jurisdiction since they had deemed to have demitted their office from 14.06.2007.

10. The Hon. High Court of Karnataka allowed the WP filed by the 1st Respondent and remitted the appeal back to the 4th Respondent for a fresh hearing.

11. The 4th Respondent, after hearing both the parties, has passed a divergent order wherein 2 Members confirmed the action of the 1st Respondent while the 3rd Member gave a divergent order setting aside the notice issued by the 1st Respondent. The above majority order is now being challenged before this Authority praying for the following:

III.

PRAYER

- 1) To quash the notice issued by the Corporate office of the Respondent Licensee on 5.3.07 bearing No.BESCO/EC-25/1493/2005-06.
- 2) To set aside the order dated 19.8.2009 passed by the 4th Respondent in file No.CGRF/57/2009/390-395.

- 3) Pass such other orders as this Hon'ble Authority deems fit on the facts and circumstances of the case in the interest of equity and 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-67/09/7259 dated 23.10.2009. During the hearings on 5.2.2010 and 15.4.2010, efforts were made to reach at a settlement. Since both the parties were not interested in a settlement by conciliation and mediation, this Authority decided to hear and pass an award. The 2nd and 3rd Respondents were also called to depose before this Authority by a letter from this office No.OMB/B/G-67/2009/8181 dated 4.5.2010. They appeared and deposed on 31.5.2010.

V. Discussion and Analysis

A. Contention of the 1st Respondent:

1. Due to non-payment of the monthly bills, these installations were disconnected on 02.08.1996 and 26.008.1996 respectively. Since the Complainant did not clear the arrears, the procedure for recovery of arrears was followed by terminating the agreements and issuing of A & B Notices. He has stated that in spite of these Notices, the Complainant did not clear the arrears. Nearly after lapse of 9 years, the Complainant requested for new connection. Since the Complainant had not cleared the arrears of the above 2 HT installations, the Complainant was asked to clear the arrears outstanding against these 2 installations of Rs.2,98,000 after duly adjusting the deposit held against these 2 RR Nos. and to remit the deposit etc. for the new connection as per the prevailing rules.

2. The Complainant approached the Corporate Office, BESCO, Bangalore for granting installments for payment of the outstanding arrears and to permit him to avail the new connection. Thereupon, the Corporate Office directed to revise the arrears by

adding FC for 6 months from the date of disconnection along with interest on this amount for 180 days.

3. The 1st Respondent agreed that the supply was extended from a Rural Feeder, but agreed that there is no proof that the Complainant installed captive power generators as it is found that he has not taken any "No Objection" certificate from the 1st Respondent and also approval from the Electrical Inspectorate. Subsequently, he has addressed a letter to the Deputy Electrical Inspector, Tumkur on 12.9.1997 seeking approval to install 2 of 250 KVA DG sets with a copy marked to the 1st Respondent which again means that he was not utilizing captive generation earlier to 12.9.1997. Therefore, he has not used any captive power during the said period. His installations were disconnected for non-payment of arrears alone and he has not surrendered the installations due to poor supply.

4. The 1st Respondent submits further that as per clause 33.07 of the Electricity Supply Regulations 1988 and as per clause 32.08 of the then prevailing rules KERC (Electricity Supply & Distribution) Code 2000-01 the action taken in demanding the short claim and all other arrears etc. is in order and he requests this Authority to dismiss the request of the Complainant directing him to pay the arrears as per the orders of the GM, RTA, BESCOM, Bangalore.

B. Per Contra, the counter arguments from the Complainant's Advocate are as follows:

1. The Complainant has contended that the order passed 2nd time by the 4th Respondent is biased since the 1st time earlier order in which the evidence was rightly appreciated and given the correct judgement. The 1st Respondent had approached the Hon. High Court only on the ground of the jurisdiction of the Members of the 4th Respondent and the other merit of the order was not challenged. It was prudent on the part the present 4th Respondent to have followed the judgement passed by the earlier 4th Respondent.

2. The Complainant further has argued that in the year 1996, the company, due to improper supply of electricity which was not useful for the Company, had surrendered the electrical connections. The Complainant has further stated that the letter and acknowledgement were produced during the course of the evidence before the 4th Respondent in the first hearing. It is alleged that the 1st Respondent did not take any steps to recover the arrears, if any, from the Complainant and ought to have adjusted the 3 MMD which was available with the 1st Respondent and should have taken further steps to recover if at all any arrears was there. The 1st Respondent did not take steps to recover the alleged arrears from 1996 to 2005. It is argued that the 1st Respondent did not whisper anything about the arrears of 1996 at the time of sanctioning the new connection in the year 2005 and, only when necessary deposit was made, that the 1st Respondent raised the objections as regards the arrears of 1995.

3. Although the Complainant had grounds to reject the payment of arrears, the Complainant humbly accepted the arrears and agreed to pay the same in 6 monthly installments, which was acceded to by the 1st Respondent. However, the Corporate office while approving the payment by installments doubled the arrears, which had no authority to do so. The Complainant has stated that there are no irregularities on the part of the local authorities in assessing the arrears and the said arrears has been paid as per the orders of the Hon. High Court of Karnataka. **The grievance of the Complainant is against the Corporate office of BESCO which has doubled the arrears only to harass the Complainant unreasonably.**

4. **The Complainant feels that the order of the 4th Respondent in the first instance was rightly allowed and the divergent orders of the 4th Respondent issued in the second instance and the demand for enhanced arrears should be set aside.**

VI. Findings

1. When approval was sought for allowing installment payment, the 3rd Respondent enhanced the arrears to Rs.5,76,627/- and approved the six monthly installments.
2. The Complainant filed a Writ Petition against this demand before the Hon. High Court of Karnataka and order was passed to remit Rs.2,98,000/- in 6 monthly installments and to file objections before the jurisdictional officer of BESCO.
3. The Complainant paid Rs.3,00,000 in six monthly installments and filed objections before the BESCO and his request was turned down.
4. **He then filed a Complaint before the 4th Respondent, who passed a reasonable order dated 18.09.2007, as opined by the Complainant.**
5. This order came to be challenged in the Hon. High Court of Karnataka by a Writ Petition No. 3908/2008 praying to quash the order on the plea that the Forum was reconstituted.
6. The Hon. High Court of Karnataka allowed the Writ and quashed the order and remitted the matter back to the newly constituted 4th Respondent.
7. The 4th Respondent rejected the request of the Complainant by a majority order dated 19.8.2009 while the 3rd Member appointed by KERC gave a dissenting order.
8. **a) In the first order of the 4th Respondent, it was held that when A, B & C Notices for recovery of arrears are issued, the arrears stands frozen and no further short claims be added to that arrears.**

b) The 3rd Member in his dissenting order has also held the same opinion.

c) The Advocate for the Complainant has also argued on the same lines.

9. In response to this office letter No. OMB/B/G-67/2009/8181 dated 4.5.2010, the 3rd Respondent, the 2nd Respondent and the 1st Respondent have agreed to restrict their demand to the arrears indicated in notice B, which amounts to Rs.4,11,060/- and this amount is also arrived at by the 4th Respondent in its 1st order and the Counsel for the Complainant has also urged that the 1st order was the correct one.

This order was quashed by the Hon. High Court of Karnataka on the plea of the Petitioner that the earlier Forum was re-constituted and, hence, order passed by it was not valid. **There was no argument or dispute on the merit of the order passed.**

This Authority holds that the merits dealt with by the earlier Forum is in order and that there is a meeting of minds of both the parties on the order of the earlier Forum and, hence, the order passed by the present Forum needs to be set aside.

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

VII.

ORDER

1. The impugned order No. CGRF/57/2009/390-395 dated 19.8.2009 is set aside.
2. The Notice No.BESCOM/BC25/1493/2005-06 dated 5.3.2007 from the G.M. (RTA), BESCOM, Bangalore is quashed.

3. The complainant is liable to pay Rs.1,11,060/- (Rupees One Lakh Eleven Thousand and Sixty) only being the balance of the arrears after deduction of Rs.3,00,000/- (Rupees Three Lakhs) only already paid from the arrears indicated in "B" Notice issued to the Complainant against RR Nos. CNHT-1 and CNHT-2.

(S.D.Ukkali)
Ombudsman

1. M/s.Siddaganga Cements Private Limited, Shivakumarnagar, Sadarhally, Chikkanayakanahalli Taluk, Tumkur District.
2. The Consumer Grievance Redressal Forum, BESCO, Central Stores Premises, near ESI Hospital, Rajajinagar, Bangalore-560010
3. The Asst.Executive Engineer (Ele), Chikkanayakanahalli Sub Division, BESCO, Chikkanayakanahalli, Tumkur District.
4. The Executive Engineer, O & M Division, BESCO, B.H.Road, Tiptur
5. The General Manager(Tech), BESCO, Corporate Office, K.R.Circle, Bangalore
6. The Managing Director, BESCO Corporate Office, K.R.Circle, Bangalore-560001.
7. PS to Hon.Chairman, KERC
8. PS to Hon.Member(H), KERC
9. PS to Hon.Member(S), KERC
10. PS to Secretary, KERC
11. Director (Tariff)
12. Deputy Director(Legal)
13. O.C.A.

