Before the Ombudsman
Karnataka Electricity Regulatory Commission
Bangalore

Present: S.D.Ukkali
Ombudsman
Case No.OMB/M/G-62/09/7834
dated 23.02.2010

Sri Vasudeva Shanbhag,
Dattaram Complex,
Post: Pangala-576122
Udupi District

.. **Complainant**

Vs

1. Mangalore Electricity Supply Company Ltd., (MESCOM)
represented by its
Assistant Executive Engineer (Ele),
O & M Division,
MESCOM
Kaup,
Udupi District

2. The Consumer Grievance Redressal Forum, (CGRF)
MESCOM Corporate Office,
Paradigm Plaza, A.B.Shetty Circle,
MANGALORE .. **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 not satisfied with the Order dated 15.07.2008 passed by the 2ND Respondent in file No. ª¦.¤/ª¦(¸ÁzÆ)4083/08-09/5034-36.

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

a) The Complainant's is the owner of Irrigation Pump (IP) set with electrical connection bearing RR No.PLIP 83 situated at Pangala village in Udupi District with a

sanctioned load of 2 HP. He has been using the electricity for many years for irrigation of his farm land. The Complainant has stated that although he had obtained temporary electrical connection to supply water for the construction of a house, his brother unknowingly has utilized some water from the above IP set for the construction purpose of a house built in his own farm land. The installation was inspected by the Vigilance Squad of MESCOM on 13.2.2008. Based on the report from the Vigilance Squad dated 13.2.208, a provisional bill of Rs.11,340/- was served for misuse of electricity vide the letter dated 15.2.2008 by the 1st Respondent on the ground that electricity provided for one type of category has been **unauthorisedly** used for another category. **The Complainant has contended that although the MESCOM authorities have indicated as 3 months back billing in the provisional bill, the calculation has been made for 6 months duration. He has argued that his meter was working accurately and that he has utilized only 95 units during the previous 6 months and has paid for the same at the rate of Rs.0.40 per unit and that it was not correct to charge Rs.11,340/- for 95 units while back billing.**

b) On the objections raised by the Complainant, the 1st Respondent has clarified that penalty has been levied under Regulation 42.02 of Conditions of Supply (COS) of Electricity of Distribution Licensees in the State of Karnataka and that he has to pay the penalty within 30 days. The Complainant has paid Rs.8000/- vide receipt No.20065 and Rs.3,340/- vide receipt No.20796, totalling to Rs.11,340/-, on 19.05.2008 **under protest**.

c) Thereafter, he has filed a complaint before the CGRF, MESCOM, Mangalore on 19.06.2008 and the **Chairman of the Forum has replied on 15.07.2008 rejecting the appeal of the Complainant on the ground that it does not come under its jurisdiction.**

d) The Complainant, aggrieved by this decision of the 2nd Respondent, has filed a representation before this Authority to redress his grievance.

III. PRAYER

To direct the 1st Respondent to:

1. Collect 3 months back billing.
2. Calculate the back billing based on the consumption in the meter.
3. Refund the excess amount collected, after deducting the reasonable back bill charges duly also considering the regular bill already paid.

IV. Admissibility:

Since the Chairperson of the 2nd Respondent has cited lack of jurisdiction to the Forum, it is necessary to decide on the admissibility of this petition.

a) The 2nd Respondent's Chairperson has erred in treating the Complaint casually and addressing a letter. When the Complaint was registered, the 2nd Respondent should have followed the provision of Regulations 7, 8 & 9 of the KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004.

Every complaint should be heard and the Respondent also be given an opportunity and an order be passed as per Sub Regulation 8.3 of Regulation 8, which is reproduced hereunder:

"Every order made by the Forum shall be signed by its Chairperson and the Members conducting the proceeding. Provided that in case of difference of opinion among the members on any point or points, the decision of the majority shall prevail."

b) **Regarding the jurisdiction,** " Clause (g) of Regulation 2 of the KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2004, empowers the CGRF to entertain all grievances except those relating to the following:

i) Unauthorised use of electricity under Section 126 of the Electricity Act, 2003.

ii) Offences and penalties referred to under Sections 135 to 139 of the said Act.

iii) Grievances relating to accidents referred to under Section 161 of the above Act.

The grievance in the instant case does not relate to any of the above categories since the water is used for the bonafide self use and this does not constitute misuse as alleged. **The Forum therefore had all jurisdiction to entertain this grievance of the Complainant and pass order in accordance with law.** Having said so, it is held that this Authority has jurisdiction and this **petition is admitted**. The impugned decision of the single Member of the Forum (Chairperson) to hold that this case did not come within its purview is absolutely incorrect. The decision of the Chairperson, CGRF, MESCOM communicated to the Complainant is liable to be set aside."

V. Settlement by Agreement

Vide this office letter No.OMB/M/G-62/09/7221 dated 09.10.2009, both the parties were informed of provision of Sub-Regulation-1 of Regulation 20 which provides an opportunity for settlement by agreement through conciliation and mediation. The Complainant vide his letter dated 23.10.2009 has informed that his efforts to contact the 1st Respondent has gone in vain and that order should be passed based on the request already made by him. The 1st Respondent in his letter dated 24.10.2009 has stated that he has explored the possibilities to settle the case by conciliation and mediation but it was not possible. It was decided to hear the parties and pass an award.

VI. Personal Hearing:

The Complainant in his representation has stated that since he is an old man of 60 years with ill health, he was personally unable to depose before this Authority at

Bangalore and that justice should be provided to him considering his request made in this regard in writing.

VII. Analysis and Findings:

The 1st Respondent has submitted his parawise comments and his successor has appeared and deposed on 27.11.2009 before this Authority. Based on records and the deposition made, the following points emerge:

1. The Vigilance authorities have inspected on 13.2.2008 and found that the water meant for irrigation purpose was allegedly misused for construction of new building for the last six months and directed the 1st Respondent to claim reasonable (¸ÆP) back billing.

2. The 1st Respondent accordingly claims the back billing for Rs.11,340/- .

3. The Complainant agrees that some water is used for the construction of house and also that a temporary connection for this purpose was earlier availed. His objection is for the improper calculation of the back billing and seeks clarification from the 1st Respondent. He desires that a reasonable back billing be claimed, makes payment of the back billing under protest.

4. The 1st Respondent clarifies that he has claimed the back billing charges as per the provisions 42.02 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. This provision relates to Section 126 of the Electricity Act 2003 dealing with the misuse of electricity.

Having regard to the decision arrived at para IV(b) above, the provision 42.02 of COS is not applicable to this case.

VIII. It is worthwhile to look to the Tariff provisions for various categories of electricity supply. There are common notes for LT-4 tariff category for IP sets, which read thus:

a) Note 1: The energy supplied under this tariff shall be used by the Consumers only for Pumping water to irrigate their own land as stated in the I.P. Set application / water right certificate and for bonafide agriculture use. Otherwise, such installations shall be billed under the appropriate Tariff (LT-3/LT-5) based on the recorded consumption if available, or on the consumption computed as per the Table given under Clause 42.06 of the Conditions of Supply of Electricity of the Distribution Licensees in the State of Karnataka.

b) Note 2: The motor of IP set installations can be used with an alternative drive for other agricultural operations like sugar cane crusher, coffee pulping etc. with the approval of the Licensee. The energy used for such operation shall be metered separately by providing alternate switch and charged at LT Industrial Tariff (Only energy charges) during the period of alternative use. If the energy used both for IP Set and alternate operation, is however measures together by one energy meter, the energy used for alternate drive shall be estimated by deducting the average IP Set consumption for that month as per the IP sample meter readings for the sub division as certified by the sub divisional Officer.

c) Note 4: The water pumped for agricultural purposes may also be used by the Consumer for his bonafide drinking purposes and for supply of water to animals, birds, Poultry farms, Diary Farms and fish farms maintained by the Consumer in addition to agriculture.

d) **Clause 12.02 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka deals with temporary usage in the premises already having permanent supply, which is reproduced hereunder:**

a) Use of power within the Consumer's premises for Temporary purposes for bonafide **domestic** use is permitted subject to the condition that the total load of the installation on the system does not exceed the sanctioned load.

b) Where it is intended to use floor polishing equipment and such other portable equipment temporarily in a premises having permanent supply, such equipment shall be provided with an earth leakage circuit breaker of adequate capacity.

If these provisions are studied carefully, it is clear that for this case, the provisions of Note 2 are not applicable, as it deals with alternative drive for sugar cane crusher, coffee pulping etc. relating to agriculture operations.

Whereas, the provisions of Note 1, Note 4 of tariff provisions and provisions of Clause 12.02 (a) of COS are relevant to this case.

Nowhere it is specifically mentioned as to what tariff is to be applied for the bonafide use of water for construction purposes of his own house in his own farmland (premises) where he is already having permanent electricity connection such as IP set.

In fact, as per Note 4 at para VIII (c), pumped water for agriculture could be used without any additional cost for various other purposes mentioned therein.

Similarly, as per para VIII (d) use of the power within consumer premises for the purpose of bonafide domestic use for temporary purpose is permitted without any additional cost, subject to not exceeding the sanctioned load.

If the usage of water for construction of residential building is considered as usage for domestic purpose, the Complainant need not pay anything, but the Complainant himself has volunteered to pay if reasonable back billing is claimed. This Authority feels appropriate to pass an award in terms of the provisions of Note 4

mentioned above at para VIII (a) which provides that **the energy supplied under this tariff shall be used for pumping water for bona fide agricultural use. Otherwise such installations shall be billed under appropriate tariff (LT 3 / LT 5) based on the recorded consumption if available.**

The following important facts emerge:

1. There is a recorded consumption of 95 units for six months in the meter of this connection and regular payment at eligible IP tariff is already paid..

2. LT-3 cannot be applied to this case as water is not sold and it is used for a bonafide self use and, therefore, the other alternative tariff mentioned in Note 4 i.e. LT-5 is applicable.

3. The inspecting Vigilance Authority states in his report dated 13.2.2008 that **"ನೀರಾವರಿ ಪಂಪಿನ ಸ್ಥಾವರದಿಂದ ಹೊಸ ಕಟ್ಟಡ ನಿರ್ಮಾಣಕ್ಕೆ ನೀರುಣ್ಣಿಸುವುದಕ್ಕೆ 2 HP ಪಂಪಿನಿಂದ ನೀರನ್ನು ಈಗ್ಗೆ 6 ತಿಂಗಳಿಂದ ಉಪಯೋಗಿಸುತ್ತಿದ್ದು, ಸೂಕ್ತ ಹಿಂಬಿಲ್ಲು ತಯಾರಿಸುವುದು."**

He has not quoted any provisions under which the back billing is to be claimed and how it is to be claimed. But has stated that the water for construction of **new building is used for 6 months from this IP set.**

This Authority arrives at decision in terms of Note 4 that the Complainant is liable to pay 6 months normal billing at LT-5 tariff on the consumption recorded minus the amount already paid by him at Irrigation Pump Set tariff rate and is worked out as follows:

LT-5 tariff is applicable:

a) 1.	Fixed charges at the rate of Rs.20 per HP per month	2x20x6	Rs. 240.00

2.	Energy charges upto 500 units @ 330 paise per unit per month	95x330x6	Rs.1881.00

		Total	Rs. 2121.00
3.	Tax at 5%		Rs. 106.05

		Grand Total	Rs. 2227.05
		Say	Rs. 2227.00

b) Bill already paid by the Complainant at IP tariff for 6 months

1.	Fixed charges @ Rs.10 per HP	2x10x6	Rs. 120.00
2.	Energy charges @ paise 40 per unit for 95 units	95 x40 paise	Rs. 38.00

		Total	Rs. 158.00
3.	Tax at 5% on the above – Rs.7.90 Say Rs.8.00		Rs. 8.00

		Grand Total	Rs. 166.00

c) The amount payable (a – b) Rs.2227 – Rs.166 = **Rs.2061.00**

Having regard to the analysis and findings cited above, the following order is passed:

IX. O R D E R

1. The decision of the Chairperson of the 2nd Respondent communicated vide letter dated 15.07.2008 **is set aside**.

2. The notice dated 15.02.2008 from the 1st Respondent claiming back bill of Rs.11340/- **is set aside**.

3. The Complainant is liable to pay a back bill of **Rs.2061.00 (Rupees Two thousand and sixty one) only.** Since he has already paid Rs.11340/-, the 1st Respondent shall refund an amount of **Rs.9279.00 (Rupees Nine Thousand Two hundred and seventy nine) only** within 30 days from the date of receipt of this order.

(S.D.Ukkali)
Ombudsman

1.Sri Vasudeva Shanbhag, Dattaram Complex, Post: Pangala-576122, Udupi District.

2. Consumer Grievance Redressal Forum, MESCOM, Paradigm Plaza, A.B.Shetty Circle, Mangalore.

3. The Asst.Executive Engineer(Ele), O & M Sub Division, MESCOM, Kaup, Udupi District.

4. The Managing Director, MESCOM, Paradigm Plaza, A.B.Shetty Circle, Mangalore.

6. PS to Hon.Chairman, KERC

7. PS to Hon.Member(H), KERC

8. PS to Hon.Member(S), KERC

9. PS to Secretary, KERC

10. Director(Tariff)

11. Deputy Director(Legal)

12, OCA

IV. Contention of the 1st Respondent:

The 1st Respondent in his reply No.AEEE/Kaup/922 dated 27.8.2009 has clarified that the installation bearing RR No.PLIP 83 is an irrigation pump set with a sanctioned load of 2 HP and the said installation was inspected by the Vigilance Squad of Udupi Division on 13.02.2008 who reported that the water drawn from this installation was being utilized for construction of a new building for the past 6 months. Based on the said spot inspection report, a provisional bill for Rs.11340/- was preferred and served on the registered consumer on 15.2.2008. It is further stated by the 1st Respondent that the provisional bill is prepared for the usage of 2 HP Motor for a period of 6 months at 1.5 times of the tariff applicable to Temporary installations which ought to have been obtained by the Consumer for construction purpose in accordance with Section 42.02 of ES&D code 2004.

It is further stated by the 1st Respondent that the Complainant raised his objections vide his letter dated 12.03.2008 asking MESCOM to limit the bill to 95 units which he has stated as the actual use in his IP set installation. The 1st Respondent has stated that in the case of using an installation of lower tariff category for the purpose which comes under higher tariff category, penal bills must be preferred under higher tariff category and action taken in this case is in accordance with law and this fact has been brought to the notice of the Complainant vide letter dated 20.3.2008.

It is further stated by the 1st Respondent that the Complainant has admitted that he has used his IP set for the purpose of construction of new building and he has also stated that temporary power supply was obtained twice for this purpose as per the records available in the office of the Respondent Licensee which proves that the Complainant knew about the necessity of availing temporary power supply for construction purpose and also that this is costly compared to other tariff categories.

The 1st Respondent has averred that it is wrong on the part of the Consumer to state that there is error in the billing and it is also wrong to state that the consumer is penalized for no fault of his.

The 1st Respondent has stated that the construction licence for the said new stood in the name of Sri Panduranga Shetty on 11.7.2009 and the temporary power supply was obtained only for 20 days. It is clear that he must have used the said IP set installation for the construction purpose definitely for a period of more than 6 months as the construction work continued for over a period of 1 year and that the Complainant has been informed of all these facts well in advance.

The 1st Respondent has informed that the penal bill dated 15.2.2008 is correct and that the Complainant has paid the amount on 19.5.008. He has concluded that since all actions are taken in accordance with the prevailing norms, the complaint does not merit consideration and that the same may be rejected.