

**Before the Electricity Ombudsman**  
**9/2, 6<sup>th</sup> Floor, Mahalakshmi Chambers, M.G.Road,**  
**Bangalore**

**Present: B.R.Jayaramaraje Urs, IAS**  
**Electricity Ombudsman**  
**Case No.OMB/B/G-101/10-11/10346**  
**Dated 14.06.2011**

**Between**

Sri A.Chandrappa  
 No.38, IInd Main,  
 B.T.M.1<sup>st</sup> stage  
**Bangalore-560029**

.. **Complainant**

**Vs**

1. Asst. Executive Engineer,  
 BESCOM,  
 S-6 Sub Division, J.P.Nagar,  
**Bangalore**

2. Consumer Grievances Redressal Forum (C.G.R.F)  
 BESCOM Corporate office,  
 K.R.Circle,  
**Bangalore-560001**

.. **Respondents**

This is an appeal under the provisions of K.E.R.C (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004. This appeal is directed against the order passed by the 2<sup>nd</sup> respondent vide No ಗ್ರಾಹಕೋಪವೇ/8/2010/920-27 ದಿನಾಂಕ 07.07.2010.

The appeal arises out of the orders passed by the Consumer Grievances Redressal Forum (in short Forum-2<sup>nd</sup> Respondent) Bangalore dated 07.07.2010 in respect of the Appellant's grievance relating to back billing for Rs.1,582/- and realisation of such amounts through Electronic Clearance System by the 1<sup>st</sup> Respondent. The Forum declined to issue direction to BESCOM (Bangalore Electricity Supply Company - hereinafter referred to as 1<sup>st</sup> Respondent) to refund the back billing charges of Rs.1,582/- collected from the Appellant by the 1<sup>st</sup> Respondent.

Sri A.Chandrappa is an electricity consumer and electric installation bearing No 6 SH-1931 stands in his name. The installation is situated in the limits of BESCO, S-6 Sub Division, J.P Nagar, Bangalore.

The Appellant filed this appeal memo on 12.08.2010. The Appellant, in his appeal memo, complained that S-6 Sub-Division, J.P Nagar, Bangalore debited Rs.1,582/- to his bank account through the Electronic Clearance System. BESCO has drawn Rs.1582/- from his account without informing him and, only when he made enquires, BESCO informed that they debited this amount as there were some outstanding dues pertaining to 8/2004 to 2/2006 period. BESCO has recovered this amount after a lapse of 3 years 10 months. Further, he contended that as per Section 56(2) of the Electricity Act "no sum due from any consumer, under this section, shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied." Rs.1,582/- became due from 8/2004 to 2/2006 and BESCO has got powers to recover any charges within 2 years from the date such amounts became due. In the instant case, BESCO has issued a bill on 10.12.2009 after a lapse of 3 years 10 months and, since BESCO cannot recover such amounts, they be directed to refund the amount.

On behalf of BESCO Sri Shivasharana, incharge AEE, S-6 Sub Division appeared and put forth his arguments on 20.05.2011. He submitted that BESCO served notice on the appellant vide letter No. 2821 dated 08.10.2009 to pay Rs.1,582/-. BESCO came to know of this short claim through internal auditing. The observation of the Auditors was conveyed to the Appellant and there was no objection from the Appellant for recovery of Rs.1,582/- and, hence, this was debited to the Appellant's account and this was recovered through E.C.S. The amount was realised through E.C.S. as per the consent of the Appellant. Further, he clarified that there is tripartite agreement to effect such recoveries through E.C.S. Since it is a running account, this clause is not applicable in the present case. When certain clarifications were sought, he submitted that he was not fully conversant with the matter and regular AEE would come and make clarification if time was granted. In view of this, time was granted to the Respondents and the case was adjourned to 30.05.2011.

On 30.5.2011, Shri C.P Manjunath, AEE, S-6 Sub Division appeared and submitted that the meter had not worked from 8/2004 to 2/2006 i.e. for nearly 18 months and consumption not properly recorded during the period and, hence, BESCO, as per Clause 27.04 of the Conditions of Supply of Electricity in Karnataka demanded charges for the preceding 6 months from the date of knowledge of non-functioning of the meter i.e. 15.08.2005 to 15.02.2006. Further, he submitted that BESCO fixed a new meter on 15.02.2006 and, as per Regulation, BESCO has charged the amount for the preceding 6 months from the date of fixing of the new meter. Amount shown as dues is worked out on the average consumption of the installation. BESCO worked out 6 months average consumption. This is taken when the meter was previously functioning. According to him, the meter functioned correctly up to 10.09.2004.

The Asst Executive Engineer further submitted that only after the internal audit pointed out this non-recovery, O.& M Sub Division came to know of this short claim and BESCO received the internal audit report in December 2009. The Asst. Executive Engineer conceded that BESCO has failed to issue demand within 2 years from the date when such amount became first due. However, he acted on the basis of a circular issued by BESCO. BESCO issued this circular on the basis of the Hon'ble High Court order. Citing the Hon'ble High Court order, he held that as per the Hon'ble High court's order, dues can be recovered within 2 years from the date BESCO came to know of such dues. He further sought time to produce the High Court orders in this regard. Again, time was granted at the request of the Asst Executive Engineer.

The Asst Executive Engineer, on 01.06.2011, appeared and produced the Hon'ble High Court orders.

Both parties were informed vide letter No.OMB/B/G/2011/10165 dated 12.05.2011 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.

From the above contentions we have to examine whether the contention of the Appellant is tenable in the light of the Hon'ble High Court's ruling?

Asst Executive Engineer, BESCO, based on the High Court order made a submission that the Hon'ble High Court in W.P No 17225/2007 dated 5<sup>th</sup> November 2008 while allowing the Writ Petition has held that "two years has to be reckoned from the date of issue of demand and not earlier to that". Further, the Honble High Court has observed that "clause 29.08 of Conditions of Supply of Electricity in Karnataka has to be considered for the purposes of calculation of period of 2 years only from the date of knowledge and not from the date on which the sum became first due". In that Writ Petition, similar to the present one, the Distributor issued demand after receipt of audit report with regard to short claims and the Hon. High Court observed that "it is not in dispute that the short claim was made known to the Petitioner (Distributor) only when it received the audit report. The same date has to be considered as the date on which such sum became first due. There was no occasion for the Petitioner to raise a bill prior to the receipt of audit report. Therefore, this Court is of the opinion that the period of two years has to be counted from the day on which Petitioner-company has come to know of such short claim". The Asst Executive Engineer further contended that, in the present case, BESCO received internal audit report in the month of December 2009 and raised the bill on 10.12.2009 against the Appellant and, hence, claims are not time-barred and it is issued within 2 years from the date of knowledge of such short claims. BESCO, after the receipt of audit report, came to know of short claim to an extent of Rs.1,582/- and within two years period it has taken measures to recover such amount from the Petitioner through E.C.S. which is again on the consent of the Appellant based on the tripartite agreement. He further clarified that amount is not unauthorisedly claimed as alleged by the Appellant.

Concluding his arguments, the Asst Executive Engineer prayed for dismissal of the appeal based on various Court rulings.

From the above contention of the Asst Executive Engineer, it is clear that the Respondent Company has made claims within two years from the date of knowledge of such claims i.e through audit report and realised short claim of Rs.1,582/- through E.C.S which has the consent of the Appellant. In view of this, the contention of the Appellant, that 2

years period starts from the date of consumption of electricity and not from the date of knowledge of such short claims, cannot be accepted as valid.

Hence I proceed to pass the following orders:

## **ORDER**

In the circumstances discussed above, the appeal is not allowed and, consequently, **the appeal fails.**

(B.R.Jayaramaraje Urs)  
Electricity Ombudsman

1. Shri A.Chandrappa, No.38, Iind Main, B.T.M.1<sup>st</sup> Stage, Bangalore-560029.
2. Assistant Executive Engineer, 6<sup>th</sup> South Sub Division, BESCOM, 14<sup>th</sup> Cross, J.P.Nagar 1<sup>st</sup> Phase, Bangalore-560070
3. Consumer Grievance Redressal Forum, BESCOM Corporate Office, K.R.Circle, Bangalore-1
4. Managing Director, BESCOM Corporate Office, K.R.Circle, Bangalore-1
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. OCA