



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/B/G-91/2010/80

Dated 29.06.2012

M/s.D'GIPRO,
 #3796, 7th Main, H.A.L. 2nd Stage,
BANGALORE-560008.
(Represented by Sri M.A.Delvi, Advocate -
Authorised Representative)

.. Appellant

Vs

1. The Asst. Executive Engineer(EI)
 E-6 Sub Division, BESCOM,
 16th "C" Main Road, H.A.L. 2nd Stage,
 Indiranagar,
BANGALORE-560068

2. The Chairperson,
 Consumer Grievance Redressal Forum,
 B.E.S.C.O.M. Corporate Office,
 K.R.Circle,
BANGALORE-560001

.. Respondents

1. This is an appeal under the provisions of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 against the orders passed by the Consumer Grievance Redressal Forum, Bangalore (hereinafter referred to as the 2nd Respondent) vide No CGRF/41/2010/853-859 dated 31.05.2010 in respect of the Appellant's grievance relating to back billing for Rs.7,85,348/- by the Assistant Executive Engineer (EI) E-6 Sub-Division, BESCOM (hereinafter referred

to as the 1st Respondent) for not producing Certificate of Registration issued by the Competent Authorities in the Industries & Commerce Department and refusal of the 2nd Respondent to issue any directions to the 1st Respondent to refund the amount collected. Aggrieved by the decision of the 2nd Respondent, the Appellant has submitted his case as under:

2. The Appellant is an Electricity consumer of BESCOM under L.T-3 Tariff Category (commercial). Electrical Installation bearing R.R No.3EP 3525 stands in the name of the Appellant. The installation was serviced on 12.03.2001 with a sanctioned load of 4 K.W. The Appellant is engaged in Software Development. The Appellant in the year 2001 produced a Certificate of Registration issued by the Department of Industries & Commerce stating that the Appellant had engaged in Software Development. Based on this, the 1st Respondent classified the Installation as coming under L.T-5 Tariff. This went on without any problems till 10.01.2006. The staff of vigilance (BESCOM) visited the premises of the Appellant and, during their visit, the staff observed that the Assistant Executive Engineer(EI) based on the S.S.I certificate issued by the Industries & Commerce Department had changed the commercial tariff to industrial tariff on 24.07.2001 as per Consumer's letter dated 28.06.2001 without Certificate being issued by Competent Authorities.

3. The 1st Respondent, acting on this report, served a back bill for Rs.7,85,348/- vide its demand notice dated 17.02.2006. Thereafter, the Appellant made several representations to the 1st Respondent. Since there was no positive response from the 1st respondent, the Appellant filed a Writ Petition before the Hon'ble High Court in W.P No 11793 of 2006 which was disposed off by an order dated 28.08.2006 wherein the Hon'ble High Court directed the 1st Respondent to take appropriate decision on the objections filed by the Appellant within an outer limit of three weeks from the receipt of the copy of the order. The 1st Respondent could apply his mind to these directions only on May 2007 and afterwards the Appellant was asked to get a Certificate of eligibility from the Competent Authority within a week to extend the benefits. In the meanwhile, the Appellant approached the Corporate Office seeking justice in the matter. By a communication dated

31.12.2007, the G.M(Tech), BESCOM informed the Appellant that the subject relating to the Appellant had been examined and a decision had been taken to withdraw the demand raised by the Assistant Executive Engineer(EI), E-6 Sub-Division dated 17.02.2006. By this letter, the matter was closed. But it was not to be. The same Authority rescinded this order after a lapse of one year and the back bill was revived and the Appellant was again asked to pay a sum of Rs.14,91,746/- by his demand notice dated 11.9.2008. This was protested by the Appellant.

4. The 1st Respondent by a letter dated 15.09.2009 communicated that they had revised the claim as per BESCOM Circular vide No.CYS 140 dated 10.11.2006 to two years for Rs.5,39,360/- and the Appellant to pay this amount within 30 days. This amount was coerced to be paid by the Appellant as the power supply to the installation had been disconnected. Payment was made under protest. Once again the 1st Respondent taking shelter under the Circular vide No. CYS 140 dated 10.11.2006 made another demand for Rs.2,99,791/-. It was at this juncture that the Appellant approached the 2nd Respondent challenging the entire demand made by the 1st Respondent for Rs.2,99,791/-. The 2nd Respondent heard the Appellant at length, but, unfortunately, by a majority order, only partial relief was extended and the 2nd Respondent struck down the subsequent claims of Rs.2,99,791/-.

5. BESCOM issued a Circular dated 10.11.2006 stipulating a Certificate of Registration issued by an officer not below the rank of Joint Director, Department of Industries & Commerce is acceptable for extension of benefits and, prior to that, there was no such stipulation that Certificate should be issued by an officer not below the rank of the Joint Director, Department of Industries & Commerce. Hence, the Appellant prayed this Authority to set aside the orders of the 2nd Respondent and to direct the 1st Respondent to refund the amount already paid.

6. The 1st Respondent's comments were called vide No OMB/B/G-91/10/11401 dated 13.12.2011 and the 1st Respondent has furnished his comments vide letter No A.E.E/AAO/ESD6/7038 dated 25.08.2010 under covering letter No.AEE/E6SD/AAO/2712/14 dated 26.12.2011.

7. In his comments, the 1st Respondent submitted that installation bearing R.R No.3EP 3525 had been serviced on 12.03.01 with a sanctioned load of 4 K.W in the name of Shashi Menon and the Appellant represented for change of tariff from L.T-3 to L.T-5 category duly producing a Certificate of Registration as permanent small scale industry, manufacturing "CAD, CAM, CAE service. Based on the Registration Certificate issued by the Assistant Director, Department of Industries and Commerce, Bangalore, South Taluk, the South Sub-Division Officer, the Asst.Executive Engineer(EI) changed the tariff from L.T-3 to L.T-5 category with effect from 24.07.01. This installation had been inspected by the vigilance squad on 10.01.06 and, on the basis of the vigilance report, the Assistant Executive Engineer(EI) back billed the installation for the period from 01.07.01 to 10.01.06 for Rs.7,85,348/- as the Registration Certificate furnished by the Appellant had not been issued by an officer of the rank of the Joint Director or officer of higher rank. In the mean time, the Appellant filed a Writ Petition in the Hon'ble High Court vide No.11793/2006. The WP had been disposed off with a direction to the 1st Respondent to pass appropriate orders within 3 weeks. The Assistant Executive Engineer(EI), after considering the objections filed by the Appellant, advised the Appellant to furnish Certificate of Registration issued by the officer not below the rank of Joint Director of the Department of Industries & Commerce for changing the tariff category from L.T-3 to L.T-5 and also informed the Appellant that the benefit extended earlier had been withdrawn as the Certificate had not been issued by the Competent Authority and back billing had been raised for Rs.7,85,348/- for the period from July 2001 January 2006. Again, a letter had been issued dated 25.05.2007 advising the Appellant to produce a Certificate of Registration issued by an officer not below the rank of Joint Director of Industries & Commerce Department. In spite of reminders, the Appellant, instead of furnishing the Certificate of Registration, again filed a W.P vide No11339/2007 in the Hon'ble High Court. The Hon'ble High Court passed orders on the W.P on 07.08.2007 directing the Writ Petitioner to furnish the Certificate of Registration to the 1st Respondent within 5 weeks from the date of passing the order. The Appellant failed to furnish the Certificate within 5 weeks and, hence, the 1st respondent had been forced to

disconnect power supply to the Appellant's installation. At last, the Appellant furnished the Certificate and, during the interregnum, the Hon'ble High Court passed orders in favour of the 1st Respondent and, hence, a letter had been addressed to the Appellant to pay the differential amount towards the arrears of changing tariff from L.T-3 to L.T-5 from 07.2001 to 9.2008 amounting to Rs.14,91,746/- within seven days vide letter No-1327 dated 11.9.2008. Since the Appellant failed to pay the amount, the 1st Respondent resorted to disconnection of power supply to the installation. Aggrieved by the disconnection, the Appellant again filed a W.P before the Hon'ble High Court and, this time, the Hon'ble high Court advised the 1st Respondent not to disconnect power supply to the Appellant's installation. The Court directed the Appellant to treat the communication already received as Show Cause Notice and to file his objections to the General Manager (Tech) BESCOM and a direction to the G.M (Tech) to place the objections before the BESCOM Board and the Board to take appropriate decision thereafter after affording opportunity to the Appellant. The Board considered the objections filed by the Appellant on 29.06.2009 and communicated the following decision:

"The consumer has not produced the valid certificate from the Department of Industries & Commerce at the time of tariff conversion from commercial tariff to industrial tariff on 21.06.2001. The Consumer furnished the valid Certificate on 16.10.2007 and was entitled for the industrial tariff concession from 16.10.2007 onwards. The Sub-Division has raised short claim for a period of 5 years from 01.07.2001 to 01.01.2006. The claims has to be limited for a period of two years in accordance with the Circular CYS 140 dated 10.11.2006. As such, the short claims revised up to 01.01.2006 for Rs.5,39,000/- was intimated to the Consumer vide letter No AEE/AAO/ESD6/1931 dated 15.09.2009 and the same was paid by the consumer vide receipt No. 4011 dated 24.10.2009."

8. The Assistant Executive Engineer(EI) added that the short claim from 01.01.2006 up to the production of Certificate of Registration issued by the IT & BT

i.e 16.10.2007 worked out to Rs.2,99,791/- and had been intimated to the consumer vide letter No.AEE/AA/ESD-6/2249 dated 02.11.2009 and, till date, the Consumer had not paid the amount and has approached this Authority for further directions.

9. The matter was taken up for hearing on 18.5.2012. The Appellant was represented by his Authorised Representative Sri M.A.Delvi and the 1st respondent was represented by Shri Vinayaka, Assistant Law Officer, BESCO. After several hearings, arguments got concluded on 13.06.2012.

10. The representative of the Appellant and the Asst Law officer BESCO reiterated their submissions made in the appeal memo and the comments respectively.

11. Both parties were informed vide letter dated 02.05.2012 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.

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

Whether short claims made by the 1st Respondent on the Appellant for Rs.7,85,348/ is in order?

13. In order to answer the question, we will have to refer to two Circulars issued by the licensee dated 27.02.1999 and dated 10.11.2006. In the circular dated 27.02.1999, the Licensee has instructed ***"If the firm produces the necessary documents from C & I department to the effect that the said firm was involved in the development of Hardware and soft ware from 01.01.1998 itself or earlier to that, then in such cases Industrial Tariff shall be made applicable retrospectively from the next meter reading date on or after***

01.01.1998 itself and excess energy charges collected if any shall be adjusted in the future electricity bills. The certificate issued by the Joint Director DIC or Officer of higher rank shall be accepted for extending this Tariff benefit.

14. In the present case, the Vigilance squad inspected the installation of the Appellant and observed that based on the SSI certificate issued by Department of Industries & Commerce, the Asst.Executive Engineer (EI) changed the commercial tariff to industrial tariff on 24.07.01 as per consumer letter dated 25.6.2001 without the Certificate being issued by Department of Industries & Commerce for electricity tariff concession. Based on the Vigilance report, the Asst.Executive Engineer(EI) E-6 Sub-Division made short claims for Rs.7,85,348/- for the period between 01.07.2001 to 10.01.2006.

15. The certificate issued by the Industries & Commerce Department dated 21.06.2001 states that the Appellant's industry is registered as SSI unit for the manufacturing/processing activity of "CAD, CAM, CAE SERVICE, SOFTWARE SERVICE, ASIC Design AND LIBRARIES DEVELOPMENT". The certificate is signed by the Assistant Director, Department of Industries and Commerce, Bangalore South Taluk, Bangalore Urban District.

16. The vigilance squad pointed out that the Assistant Executive Engineer(EI) has extended the industrial tariff to the Appellant's installation, though the BESCOM Circular insisted that the certificate from not below the rank of the Joint Director, Industries & Commerce Department be accepted or considered for extension of benefit of industrial tariff to the Consumers. The observation made by the vigilance squad is found to be in accordance with the Circular issued by the Licensee dated 27.02.1999. The Licensee has issued one more Circular dated 10.11.2006 which reiterates earlier Circular. Clarification at Para 1 on page 2 states ***"industrial tariff may be extended to such firms who have produced certificate earlier issued from Industries & Commerce Department, Govt of Karnataka to the effect that the said firms are involved in the software***

development & Hardware. The certificate issued by the Joint Director, Industries & Commerce Department or Officer of higher rank shall be accepted for extending this tariff benefit". In so far as the Appellant is concerned, Licensee's Circular dated 27.2.1999 is applicable, because the second Circular was issued on 10.11.2006 several months after the vigilance squad had inspected the installation. The two Circulars of the Licensee which are cited above confirm that from the year 1999, the Licensee has been consistent in insisting on Certificate issued by an officer not below the rank of Joint Director or higher ranking officer for extension of the benefit of industrial tariff to the consumer. The vigilance squad has only mirrored the omissions of the Assistant Executive Engineer(EI) and how he wrongly extended LT-5 tariff benefits to the Appellant by accepting the Certificate issued by an officer of the rank of the Assistant Director, Industries & Commerce Department, though the instructions were clear that Certificate issued only by an officer of not below rank of Joint Director be accepted and considered for extending the benefits. The Appellant has produced a Certificate issued by the Industries & Commerce Department dated 16.10.2007 which recommends industrial tariff to the unit retrospectively from the year 2001. This cannot be accepted because the Appellant had not furnished proper Certificate in the year 2001 when the Asst.Executive Engineer(EI) extended the industrial tariff. Certificate issued by the Joint Director, Department of Industries & Commerce, Bangalore discloses that it has been issued as per the request of the Appellant vide its letter dated 28.08.2007. This shows that the Department had earlier issued the certificate without reference to BESCO Circular dated 27.02.1999 which clearly says that ***"the Certificate issued by the Joint Director, Industries & Commerce Department or Officer of higher rank should be accepted for extending this tariff benefit"***. The earlier Certificate issued by the Industries and Commerce Department does not conform to the said Circular. Hence, the decision of the Licensee to reject the Certificate issued by the Industries and Commerce Department is found to be in conformity with the Board's Circular.

17. The Assistant Executive Engineer(EI) has initially raised back billing for 5 years from 2001 to 2006 for Rs.7,85,348/- and this was subsequently revised by the BESCO Board and instructions are found to have been issued to the Assistant Executive Engineer to restrict the claims to 2 years as per its Circular vide No CYS 140 dated 10.11.2006. The Circular dated 10.11.2006 vide No CYS.140 at para 4 states that **"short claims at regular rates (HT2(b)-HT 2(a) or L.T-3-LT-5 tariff) may be preferred for a period of 2 years in terms of Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka including back billing charges for a maximum period of six months at one and half times the normal rate as per Clause No. 42.02 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka."** Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka states **"At any time during verification of the Consumer's account, if any short claims caused by erroneous billing are noticed, the Consumer is liable to pay the difference. However, the Licensee shall not recover any arrears after a period of 2 years from the date when such sum became first due"**. The import of this Clause is that the Licensee can recover the dues without limiting it to 2 years and within 2 years from the date of knowledge of such dues and can recover even after 2 years if such sum has been shown continuously in the bill as recoverable as arrears of the charges of electricity supplied. Clause 42.02 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka refers to restrictions of claims only for six months preceding 6 months of the inspection.

18. Hence, Circular instructions issued by BESCO dated 10.11.2006 is without any basis and no where Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka provides for back billing for a maximum period of 2 years and, hence, such Circular has to be held as invalid as the same is not in consonance with the KERC Regulations i.e Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Under this Clause, only time restriction is laid down for recovery of short claims and the Clause says

that the Licensee has to take steps to recover such short claims within 2 years from the date of knowledge of such arrears. Hence, the demand raised by the Assistant Executive Engineer(EI) for Rs.5,39,360/- restricting the claims to two years based on the Board's instruction is incorrect and amounts to misinterpretation of Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

19. 1st Respondent's letter to the Appellant dated 02.11.2009 stated that ***"In continuation of office letter under reference No 4, the short claim bill of your installation bearing R.R No 3 EP 3525 has been revised as per circular CYS 140 dated 10.11.2006 from 55 months to 25 months to Rs.5,39,360/- from 01.02.2004 to 01.01.2006 and the same was paid by you vide Receipt No. 4011 dated 24.10.2009"***

"You have furnished the valid certificate from the department of Industries & commerce signed by Joint Director and above to this office on 16.10.2007. Hence you have to pay the difference at normal tariff rate from 1.2.2006 to 16.10.2007 i.e up to the production of valid certificate from Industries & Commerce to this office works out to Rs 2,99,791."

20. From the extracts cited above, it is clear that the 1st Respondent has not claimed dues invoking Clause 42.02 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka in the instant case. If that were to be the case, the 1st Respondent would have limited his claims to 6 months and charged one and half times the tariff applicable for which the energy was misused. The 1st Respondent has not done so and has claimed the differential tariff between LT-3 & LT-5. The letter reads that it is a short claim and, hence, it can be definitely said that the instant case falls under Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

21. In view of the above, the short claims made by the 1st Respondent for Rs.5,39,360/- and further short claims for Rs.2,99,791/- for a period up to 28.11.2007 are held as valid as the Appellant has not produced prescribed Certificate for this period.

ORDER

22. For the foregoing reasons, the impugned orders setting aside the demand for Rs.2,99,791/- is set aside and the demand raised by the 1st Respondent is upheld. In the result, **appeal fails.**



(B.R.Jayaramaraje Urs)
Electricity Ombudsman

1. M/s. D'GIPRO,#3796, 7th Main, H.A.L. 2nd Stage, Bangalore-560008. (represented by its Legal Counsel, Sri M.A.Delvi, Bangalore.)
2. Consumer Grievance Redressal Forum, BESCOM Corporate Office, K.R.Circle, Bangalore.
- 3.The Asst.Executive Engineer (Ele), E-6 Sub Division, BESCOM, 16th "C" Main Road, H.A.L. 2nd Stage, Indiranagar,Bangalore-560068
4. Managing Directors of 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
9. OCA