

**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/G/G-94/2010/49

Dated 05.01.2012

BETWEEN

M/s.Karanja Industries Private Limited,
Akkamahadevi Colony,

BIDAR-585401

**(Represented by Sri M.G.Prabhakar -
Authorised Representative)**

.. Appellant

Vs

1. Executive Engineer,
O & M Division,
GESCOM
Humnabad
Bidar District
(Represented by Shri Sriranga, Advocate)

2. Consumer Grievances Redressal Forum (C.G.R.F)
GESCOM Corporate Office,
Opp Hotel Parivar, Main Road,
GULBARGA

.. Respondents

1. This is an appeal under the provisions of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004 against the orders of the Consumer Grievance Redressal Forum, Gulbarga (hereinafter referred to as the 2nd Respondent) vide No. 01/2010 dated 13.07.2010 in respect of the Appellant's grievance relating to back billing by the 1st Respondent for a period of 616 days preceding 10.02.2004 and refusal of the 2nd Respondent to issue any directions to GESCOM (hereinafter referred to as the 1st Respondent) to limit the back period claims to 6 months. Aggrieved by the Orders of the 2nd Respondent, the Appellant in his appeal memo has submitted his case as under:

2. The Appellant is an electricity consumer and electrical installation bearing R.R No. HKHT 05 stands in the name of the Appellant and the installation was serviced on 2.1.2002 under H.T-2(a) Tariff with a contract demand of 700 K.V.A. Two years after servicing the installation, meter was calibrated on 16.1.2004. The Inspection Note 437 was issued immediately after the calibration. Test Report revealed slow recording of meter by 36.11165%. During inspection, mahazar was to be drawn as per Regulation 27.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. In the present case, the Assistant Executive Engineer, H.T Rating Division, without conducting any mahazar prepared inspection report and, based on this Report, the 1st Respondent later raised a demand for Rs.30,53,542/- which included Rs.2,55,026/- of interest. The Appellant, under the threat of disconnection, paid this amount to the 1st Respondent. However, aggrieved by this order, the Appellant approached the District Consumer Dispute Redressal Forum, Bidar and the Forum after hearing the parties, passed an order holding the slow recording at 36.11165%.

3. Aggrieved by the District Consumer Dispute Redressal Forum's order, the 1st Respondent filed a Writ Petition before the Hon'ble High Court. The Hon'ble High Court, after hearing the Writ Petition, set aside the orders of the Forum and directed the Appellant to deposit an amount of Rs.10,53,542/- being the principal amount of the back billing within four weeks. As regards payment of interest, the Hon'ble High Court granted liberty to the Appellant to approach the 1st Respondent within two weeks from the date of passing such orders and also issued directions to the 1st Respondent to receive such representation and pass appropriate orders in accordance with KERC (Electricity Supply & Distribution) Code 2000-01.

4. As per the Hon'ble High Court order, the Appellant filed an appeal before GESCOM on 14.07.2006 under Section 127 of the Electricity Act, 2003 disputing the Final Assessment order No.HBD/AEEEE/SA-I/2006-07 dated 17.5.2006.

5. Later, on 4.11.2006, the 1st Respondent issued one more provisional bill to the Appellant for Rs.62,24,336/- against 45% slow recording of the meter for the period from June 2002 to February 2004. The 1st Respondent granted 15 days time

to the Appellant to make payments and to file objection, if any, during that period. It also gave an ultimatum to the Appellant to pay or face disconnection.

6. Against this Notice, the Appellant filed an O.P No.10/2007 before the Hon'ble Commission. The Hon'ble Commission, while forwarding the representation to GESCO on 13.04.2007, held that back billing for more than six months was illegal. The Hon'ble Commission further observed that the time granted to make payment was getting over, and, hence, it was necessary to stay the notice and accordingly stayed the notice till the next date of hearing and advised the Appellate Authority to pass fresh interim orders on the very first day of hearing.

7. The Appellant filed an appeal before the 2nd Respondent on 18.1.2008 (a) disputing the bill dated 12.05.2004, (b) praying to set aside the bill dated 12.5.2004 and (c) seeking direction to GESCO to adjust the amount already paid against the future bills and to pay 1.5% interest per month for the excess amount collected.

8. The 2nd respondent while passing orders on 19.11.2008 held that the CGRF had no jurisdiction to hear the case and advised the Appellant to approach GESCO as per the Hon'ble High Court's directions.

9. The Appellant moved KERC and the Hon'ble High Court (Gulbarga Circuit Bench) simultaneously questioning the bill dated 12.5.2004. The Hon'ble High Court dismissed the Writ Petition as withdrawn reserving liberty to the Appellant to put forth the grievance before the appropriate Legal Forum.

10. As per the directions of KERC, the Managing Director, GESCO passed an order dated 18.04.2009 holding that the issue was not coming under the ambit of Section 126 & 127 of the Electricity Act 2003 and, hence, the Appellant could approach Electricity Ombudsman for relief. Based on this order, the Appellant filed an appeal before the Electricity Ombudsman on 20.05.2009. The Electricity Ombudsman, after hearing the appeal, set aside the orders of the 2nd Respondent and remanded the case to the 2nd Respondent to pass fresh orders after hearing both parties. The 2nd Respondent passed the impugned orders on 13.07.2010.

11. The 2nd Respondent passed orders dated 13.07.2010 setting aside the Notice of Final Bill dated 30.03.2007 for Rs.62,24,336, and issued following directions to the 1st Respondent:

(a) To revise the back billing charges for 616 days based on 1st test report which indicated 35.11165% slow recording of the meter.

(b) To issue supplemental bill for back billing and the Appellant to comply with the notice within 30 days.

12. The Appellant, aggrieved by the orders of the 2nd Respondent, filed an appeal before this Authority. The Appellant has challenged the impugned order on the following grounds:-

i) The back billing for 616 days is illegal. Back billing cannot be made for a period more than 6 months as per Clause 27.03 Of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

ii) Secondly, the H.T Rating Division has not followed the procedure prescribed for calibration under Clause 27.03 of the Conditions of Supply Of Electricity of Distribution Licensees in Karnataka.

iii) Thirdly, the H.T Rating Sub- Division conducted calibration behind the back of the Appellant

iv) Fourthly, the Meter was not subjected to verification by the Electrical Inspector as per Section 26 of the Indian Electricity Act, 1910 read with Section 27.03 of the Code.

v) Fifthly, Bill does not disclose the basis for levying charges for a back period of 616 days.

Hence, the Appellant prayed for setting aside the impugned orders of the 2nd Respondent.

13. The 1st Respondent's comments were called vide letter No OMB/G/G-94/2010/8879 dated 8.9.2010. The 1st Respondent furnished his comments on 8.11.2010. Referring to page 19 of the 2nd Respondent's order, Advocate for the 1st Respondent submitted that the 2nd Respondent had dealt with the provisions under which back billing could be made for more than three years. Quoting the 2nd Respondent's order, he submitted that "***The Electricity Act does not impose any limitation on the claim to be made.***" Further, the KERC Code of Practice on Payments of Bill under Para No. 4(a) (i) says that "***At any time during verification of the consumer's account, if any erroneous claims are noticed, the consumer is liable to pay the difference in case the revised claims are more than the claims made in the regular bill within 30 days from the presentation of the separate supplemental bill for the short claim. However the Licensee shall not claim any payment towards short claim for back period beyond three years.***" The Licensee shall follow the procedure laid down under para 4 (b).

14. The 1st Respondent added that the meter had been faulty and the slow recording had been admitted by the Appellant. The first bill in fact had been raised on 12.5.2004 for Rs.30,53,542/- taking into account slow recording of the meter at 36.11165 % and even the amount had been paid by the Appellant. The Appellant's grievance was only against non-waiver of interest. The second bill by way of supplemental bill had been raised on 29.11.2006 for Rs 62,24,336/ on the basis of slow recording of the meter at 45%. The only difference had been that the demand had been made for all 616 days of slow recording. Further, it had to be noted that the Trivector Meter had details of slow recording and the number of days for which slow recording had taken place and also that the print out of these details had been made available to the Appellant during inspection. In fact, at the time of testing and rating, Appellant's representatives had been present and also had acknowledged the details on 16.01.2004. The Appellant had not raised any dispute about the correctness of meter testing or the fact that the meter recorded slow. This was also evident from the fact that the demand amount had been paid by the Appellant. Having regard to these two aspects, the contention that there is no provision of law

which empowered the Respondents to make demand is wholly untenable. The demand had rightly been upheld in part. In fact, the Appellant had been benefitted by the impugned order which reduced the slow recording from 45% to 36.11165%. Therefore, the impugned order did not require any interference at the hands of this Authority.

15. Insofar as the contention that the materials with regard to production having not been considered, the Advocate for the 1st Respondent submitted that the E S & D Code contemplates two situations with regard to correctness of the meter under Clause 27. The first situation is where the meter is recording, but the recording is not accurate. The procedure applicable in that context was clause 27 which was under contention. The Appellant had signed and acknowledged the slow recording of the meter and had paid the first demand and, hence, making any grievance in respect of the same belatedly was an after-thought and an attempt in futility. Hence, the Advocate for 1st Respondent prayed this Authority to dismiss the appeal.

16. The matter was taken up for fresh hearing on 30.08.2011. On behalf of the Appellant, his Authorised Representative, Shri M.G Prabhakar appeared and advanced his arguments. On behalf of the 1st Respondent, Advocates Shri Sriranga and Ms. Manasa appeared and put forth their arguments.

17. Sri M.G Prabhakar, Authorised Representative of the Appellant, argued that the matter in the present appeal related to the slow reading of the meter covered under Clause 27.03 Of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. As per KERC (E S & D) Code, 2000-01 "Electrical Inspector" means Electrical Inspector appointed under Section 36 of The Indian Electricity Act 1910 and Rule 4(A) of The Indian Electricity Rules 1956. Further, Section 185 (c) of Electricity Act, 2003 says that "***The Indian Electricity Rules, 1956 made under Section 37 of The Indian Electricity Act, 1910 (9 of 1910) as it stood before such repeal shall continue to be in force till the Regulations under Section 53 of this Act are made***".

18. He added that Section 26(6) of The Indian Electricity Act, 1910, provides for resolution of dispute arising out of slow recording of the meter wherein the decision of the Electrical Inspector is final and binding on the parties to dispute. This Section contemplates that no unilateral decision of the correctness or otherwise of the meter could be taken. It stipulates that "***where any difference or dispute arises as to whether any meter referred to sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector***". Further, the meter allegedly recording slow readings cannot be removed by the Licensee without reference to the Electrical Inspector.

19. He submitted that the Assistant Executive Engineer, H.T Rating Sub-Division at the time of testing the meter had not followed the procedure laid down under Clause 27.03 of the E S & D Code. As per this Clause, the Assistant Executive Engineer H.T Rating division is required to draw a mahazar and also obtain consumer's signature for having witnessed the test and also agreeing to pay back billing charges. In the present case, the Assistant Executive Engineer had not drawn the mahazar and, hence, collecting back billing charges was not valid in the eyes of law. The Appellant was also denied opportunity of raising a dispute before Electrical Inspector under Section 26 (6) for reasons provided under the Code which is as under:

27.3(IV): If the consumer or his representative refuses to sign the mahazar, the error in the meter need not be adjusted or the meter removed and Electrical Inspector is to be approached for testing the meter who shall test the meter within a period of one month.

20. The Authorised Representative of the Appellant citing the judgement of KERC vide No O.P 35/2003, contended that KERC had held in the said order that in the absence of mahazar, back billing of an installation would be invalid. When this order had been contested before the Hon'ble High Court, it held that this could be challenged before the Appellate Tribunal for Electricity under Section 111 of The Electricity Act 2003. When the Licensee approached the Tribunal, the Tribunal held that the case suffered from limitation and hence could not be entertained.

Therefore, the orders of the KERC had attained finality and was binding on all the parties.

21. Commenting on the meter testing, he submitted that the Licensee had conducted its 1st test two years after the service of installation. The procedure under clause 27.03 Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka required testing by a qualified Engineer. The meter had been replaced on 10.2.2004 and no check meter had been provided as contemplated under Clause 27.03 Note (1) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

22. Further arguing on the back billing, the Authorised Representative of the Appellant submitted that the back bill had been raised on 12.5.2004 for an alleged slow recording of meter at 45% which had been contrary to the 1st Inspection Report issued on 16.1.2004 which recorded 36.11165%. GESCOM had taken a stand that after enactment of The Electricity Act, 2003, the powers of the Electrical Inspector got extinguished. However, as per provisions under Section 185(2)(c) the jurisdiction for the Electrical Inspector under 26(6) was confirmed. The bill had been raised on 12.5.2004. A new meter had been fixed on 10.2.2004. The test report bearing No. 437 is available at page 186. The details are as follows:

- | | | |
|----|--------------------------|---------------------------------|
| a) | First testing done on | 16 th January, 2004 |
| b) | Replacement of the meter | 10 th February, 2004 |
| c) | Demand raised on | 12 th May, 2004 |

23. The Appellant's Authorised Representative argued that the demand raised by GESCOM was not based on the test report. In the report dated 16.01.2004, slowness in terms of percentage had been shown as 36.11165%, whereas in the demand it had been shown as 45%. There was a discrepancy in terms of percentage. While the meter had been replaced on 10.2.2004, the 2nd Respondent in its order had discussed regarding slow recording for the balance Number of days for the months of February and March.

24. Assailing the 2nd Respondent's order, he added that it was not a speaking order and all aspects on the contentions urged by the rival parties ought to have been covered and assigned reasons for coming to such conclusion. It had to be in accordance with the principles of natural justice. From the legal point of view, it suffered from infirmities, namely (a) it has not appreciated various grounds urged by the Appellant, (b) it is not a speaking order and (c) order is not supported by reasons.

25. Countering the 1st Respondent's replies to the cross-examination, the Authorised Representative of the Appellant submitted that the 1st respondent had replied that meter testing report should be treated as mahazar. This interpretation was contrary to Clause 27.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and, hence, it could be inferred that GESCOM had not drawn mahazar and not issued copy of the mahazar to the Appellant and, therefore, the question of the Appellant refusing to sign the mahazar did not arise. As per Section 26(6) of The Indian Electricity Act, 1910, when there was an error in the meter, the aggrieved party should refer the matter to the Electrical Inspector. In the present case, GESCOM was the aggrieved party and hence it ought to have approached the Electrical Inspector.

26. Further, he argued that the 1st respondent in his replies to the cross-examination had conceded that the check meter had not been fixed and also not intimated regarding 36.11165% slow recording and periodical testing had not been carried out as per norms and that he had not tested the meter in the presence of any third independent party. In view of the above, he prayed for setting aside the orders of the 2nd Respondent and for issue of directions to GESCOM to collect back billing charges only for six months preceding the 1st meter testing.

27. Arguing for the 1st Respondent, Advocate Shri Sriranga submitted that during periodical inspection, the Assistant Executive Engineer, H.T Rating Division, GESCOM, found that the meter had been recording 36.11165% slow and during inspection, he observed that the meter had to be replaced. In pursuance to this, faulty meter had been replaced on 10.02.2004 and bill had been raised on

12.05.2004. Back billing had been done for the period from June 2002 to February 2004. Demand raised by GESCO had been valid and within time as per Clause 4(a)(i) of KERC Code of Practice on Payment of Bills. KERC (Electricity Supply and Distribution) Code 2000-01 had been repealed on 02.12.2004 and as such for the above period Code of Practice on Payment of Bills was applicable and as per this code ***“the Licensee shall not claim for back period beyond three years.”***

28. Defending the procedure followed for inspection, he submitted that the installation had been inspected on 16.01.2004 and at the time of inspection the Appellant had been there and signed the report and had not raised any dispute and for this report officials had also attested their signature. Hence, Inspection Report itself could be treated as mahazar as the party had been present during the inspection and had agreed to pay the back billing charges. Further, only if consumer refused to sign the mahazar, then it would be referred to the Third Party Agency. Shri Sriranga Advocate for the 1st Respondent argued that demand for Rs.30,53,542/- had been raised for six months and this had been paid by the Appellant and the claim of GESCO for Rs.62.00 lakhs was against short claims for a period of 3 years under 4(a) of E S & D Code 2000-01 and the Appellant had accepted 36.11165 % slow recording of the meter. Hence, the Counsel prayed for dismissal of the appeal.

29. From the above rival contentions, the issue that emerges for our consideration is:

Whether C.G R.F.’s order directing the 1st respondent to issue supplemental bill for 616 days against the Appellant is as per law?

30. It is seen from the records that on 16.1.2004, the periodical calibration was done and the Assistant Executive Engineer, H.T Rating Division submitted his observation. The wording and note is reproduced here ***“The calibration conducted in the presence of the consumer, Assistant Executive Engineer O&M Sub-Division of Humnabad and found one phase Rph current in the***

meter is zero, hence the consumption is low. This was conveyed to the consumer also, orally discussed with L&T staff and declared the ETV meter faulty. This ETV meter has to be replaced at an earliest. Back bill has to be done from the date of failure of ETV meter. The CT boosting and PT ratio have to be checked."

31. It is also seen from the records that the H.T Rating Division based on the inspection Report replaced the faulty meter on 10.02.2004. On the same day the A.E.E, H.T Rating Division conducted second test in the presence of the consumer and Larsen and Toubro (meter manufacturer). Loaded data in the M.R.I was sent to Larsen & Toubro for analysis. On 29.02.2004, L&T forwarded analysis report confirming the slow recording of the meter at 45%. Based on the analysis report, the Asst Executive Engineer, O & M Sub-Division raised back bill for Rs.30,53,542/- on 12th May, 2004.

32. The Appellant approached the District Consumer Dispute Redressal Forum, Bidar, against back billing for Rs.30,53,542/-. The District Consumer Dispute Redressal Forum, Bidar, allowed the complaint of the Appellant. The Forum in its order giving the brief account of the complaint has detailed the petitioner's grievances, the extract of which is given below :

"1) There is no fault of the consumer for slow running. There is no tampering. Secondly, the reading is taken every month by A.E.E, and he has not given any report. Thirdly, the complainant is ready to pay at the rate of 36.11% .The Complainant is also not liable to pay interest and tax. The complainant has prayed that recalculations may be at the rate of 36.1165% and not at 45%".

Extracts of the operative portion of the order of District Consumer Dispute Redressal Forum is given below.

"The petition is partly allowed. The complainant has to pay Electricity bill as per the error 36.11165% to the Respondent."

33. From the reading of the District Consumers Dispute Redressal Forum's order, it becomes clear that the Appellant had accepted 36.11165% slow recording of the meter and was willing to pay the back billing charges on that basis.

34. From the records made available to this Authority, it is seen that the Appellant has not accepted the meter testing report issued by the 1st Respondent (a) fixing 45% slow recording for a period of 616 days from May 2002 to February 2004 based on the analysis done by Larsen & Toubro on the down-loaded data of the meter, (b) provisional bill notice issued on 9.11.2006 and (c) Notice of Final Bill issued for Rs.62,24,336/- on 4.11.2006.

35. The 2nd Respondent in its impugned orders has set aside the Notice of Final Bill dated 30.03.2007 issued for Rs.62,24,336/- by the 1st Respondent and issued directions to the 1st Respondent to revise the percentage of slow recording from 45% to 36.11165% for a period of 616 days preceding 10.02. 2004.

36. In the present case, the 1st meter test was done on 16.01. 2004 and 2nd test on 10.02.2004. The Appellant argues that during the 1st test, he was present and his signature had been taken on the test report and his signature had not been taken during the second test.

37. It is evident that the tests were conducted during the year 2004. During the relevant period, The Indian Electricity Act, 1910 was in force and parties were required to follow that Act. The Appellant argues that the 1st Respondent ought to have followed Section 26 of The Indian Electricity Act, 1910. What does Section 26 say? Section 26 says that "***where any difference or dispute arises as to whether any meter referred to Sub-Section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector have been correct;***

but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quality."

38. Section 26 of the Indian Electricity Act 1910 provides for reference to the Electrical Inspector "***upon the application of either party***". Under this Section, either of the party can approach the Electrical Inspector for dispute resolution. In the present case, the Appellant was aggrieved by the back billing done for Rs.30,53,542/- dated 12.05.2004 and, hence, he is seen to have approached District Consumer Dispute Redressal Forum, Bidar challenging the bill issued for Rs.30,53,542/- instead of approaching the Electrical Inspector. Even if it is presumed that the Appellant was not aware of this provision and had approached the Forum for redressal of his grievance, then we will have to see what his grievances before the Forum were?.

39. The Forum in its order at page 3 detailed the grievances of the Appellant which says that "***Thirdly, the complainant is ready to pay at the rate of 36.11%***". From the extracts of the Appellant's complaint before the Forum, it becomes clear that the Appellant is the aggrieved party at that time and he was to approach the Electrical Inspector as per Section 26 of The Indian Electricity Act, 1910. He did not exercise this option and instead approached the District Consumers Dispute Redressal Forum, Bidar. In a similar case relating to Premier Ice Factory V. Commercial Manager reported in AIR 1988 All 8, the Court has held that "***Sub-section 6 of Section 26 does not cast any duty on the licensee to refer any difference or dispute in respect of any meter for determination to the Electrical Inspector or on behalf of the petitioner. If any difference or dispute is raised by the petitioner, it is for him to make a reference to the Electrical Inspector for its determination.***" Hence, the arguments of the Appellant that the 1st Respondent should have approached the Electrical Inspector does not stand to reason.

40. Further, from the complaint filed by the Appellant before the District Consumer Dispute Redressal Forum and also from the Forum's order, it is clear that he was willing to pay Rs.30,53,542/- at the rate of 36.11% slow recording of the

meter and he was only opposing 1st Respondent claiming back billing charges on the basis of 45% slow recording of the meter. In fact, the Appellant as per the orders of the Hon'ble High Court paid Rs.30,53,542/- to the 1st Respondent. From the records, it looks that the Appellant is really aggrieved by the provisional bill issued by the 1st Respondent dated 09.11.2006 and Notice of Final Bill issued dated 30.03.2007 for Rs.62,24,336/- on the basis of 45% slow recording of the meter for 616 days. Against this bill, the Appellant looks to have approached KERC, GESCOM, the 2nd Respondent and the Electricity Ombudsman in the 1st round, and the 2nd Respondent and the Electricity Ombudsman in the second round.

41. The Appellant challenged the 1st Respondent's back billing for 616 days before KERC and the Commission while forwarding the appeal vide its order No N/12/072466 dated 13th, April 2007 to GESCOM remarked that ***"Normally appeal is to be filed with the Appellate Authority of the ESCOM. However, prima facie, the back billing is for a period of more than 6 months which is illegal. We may forward these papers to Appellate Authority to hear the parties and dispose of the matter as per law."***

42. Again from the KERC orders, it is evident that the Appellant is the aggrieved party because the Appellant filed complaint before the KERC against the back billing charges for Rs.62,24,336/- covering 616 days at 45% slow recording of the meter. The Appellant also questioned this bill before the 2nd Respondent and the 2nd Respondent in its impugned order has set aside the 'Notice of Final Bill' dated 30.03.2007 for Rs. 62,24,336/-.

"The Forum has directed the 1st Respondent to revise the back billing charges based on the slow recording by 36.11165% for a period of 616 days prior to 10.02.2004.

Citing para 4(a)(i) of 'Code Of Practice on Payment of Bill, the Forum held that "However, the licensee shall not claim any payment towards short claim for back period beyond three years." The Forum apparently has cited wrong provisions while arriving at a decision. The said provision is to enable the supplier to make short claims when 'At any time during verification of the consumer's account if any erroneous claims are noticed, the consumer is liable to pay the difference, in case the revised claims are more than the claims already made in the regular bills within 30 days from the

presentation of a separate supplemental bill for the short claim. However, the Licensee shall not claim any payment towards short claim for back period beyond 3 years".

43. In the present case, the short claims are not noticed during verification of the consumer's account. The case relates to back billing charges based on the meter testing and the slow recording of the meter at 36.11165% and the appropriate provision to be applied in such circumstances is Clause (i) of 27.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka which states that ***"When the meter is found to be slow beyond the permissible limits, the consumer shall be liable to pay the difference at normal rates based on the percentage error, for a period of not more than 6 months prior to the test"***

44. From the above, it is clear that though the 2nd Respondent, in the body of the order at page 16 and para xv accepted the limitation for back billing for 6 months, but in the operative portion, without assigning proper reasons, has directed the Appellant to pay back billing charges for 616 days. Reasoning made in the body of the order does not correspond to the final orders. Hence, such an order has to be set aside.

ORDER

45. For the foregoing reasons, the impugned orders of the 2nd Respondent is modified and the orders directing the 1st Respondent to set aside the Notice of Final Bill dated 30.03.2007 for Rs.62,24,336/- for a period of 616 days is hereby set aside and the orders of the 2nd Respondent upholding 36.11165% slow recording of the meter is upheld. **The 1st Respondent is hereby directed to issue a Revised Bill at the rate of 36.11165% slow recording of the meter for a period of 6 months preceding 1st meter test.**

46. The 1st Respondent is hereby granted liberty to refer the meter in his possession to Third Party Agency, in case any resolution is required for recovery of back billing charges at 45% slow recording of the meter.

In the result, the appeal is partly allowed.

(B.R Jayaramaraje Urs)
Electricity ombudsman

1. M/s.Karanja Industries Private Limited, Akkamahadevi Colony, Bidar.
2. Executive Engineer, O & M Division, GESCOM, Humnabad, Bidar District.
3. Consumer Grievance Redressal Forum, GESCOM, Opp. Hotel Parivar, Main Road, Gulbarga
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
9. OCA