



**Before the Electricity Ombudsman**  
**9/2, 6<sup>th</sup> Floor, Mahalakshmi Chambers,**  
**M.G.Road,**  
**Bangalore-560001**  
**Present: B.R.Jayaramaraje Urs, IAS (Retd.)**  
**Electricity Ombudsman**  
**Case No.OMB/B/G-147/2013/199**  
**Dated 30.05.2013**

Shri S.Muralidhar,  
 KIADB Industrial Area,

**M A L U R**

**(Represented by Sri M.A.Delvi, Advocate -  
 Authorised Representative)**

**.. Appellant**

**Vs**

1. The Asst. Executive Engineer(EI)  
 O & M Sub Division,  
 BESCOM,

**M A L U R**

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 Clause 21.02 of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 against the order passed by the Consumer Grievance Redressal Forum, BESCOM, Bangalore (herein after referred to as the 2<sup>nd</sup> Respondent) vide No.CGRF/123/2011/2051-56 dated 16.11.2012 in

respect of Appellant's grievance relating to levy of Fixed and Energy Charges in the case of use of unauthorised excess load for more than 6 months and also levy of interest on the amount for the entire period of pendency of the appeal before the 1<sup>st</sup> Appellate Authority instead of restricting payment of interest to 120 days. Aggrieved by the impugned order passed by the 2<sup>nd</sup> Respondent, the Appellant has submitted his case as under:

2. The Appellant is a registered electrical consumer of BESCO. The installation bearing R.R No M.P-1051 stands in the name of the Appellant and the installation was serviced on 30.07.1999 with a capacity of 62 HP. At the time of service, the installation was provided with an E.T.V Meter. By a notice dated 20.05.2000, the 1<sup>st</sup> Respondent issued a back billing for Rs.1,98,093/ under Regulation 44.00(a)(ii) of KEB Electricity Supply Regulations, 1988 for use of unauthorised excess load for a period of 11 months. The Assistant Executive Engineer (EI) noticed the use of unauthorised excess load in May 2000 and back billed for 11 months. This was unjustified, because the Regulation 44.00(a)(ii) of KEB Electricity Supply Regulations, 1988 restricts levy of Fixed and Energy Charges at thrice the regular rate for a period of 6 months only. The Appellant, aggrieved by this decision, filed an appeal before the competent Appellate Authority under Regulation 44 of KERC (ES&D) Code 2000-01 in September, 2001 by depositing a sum of Rs.49,523/-. The 1<sup>st</sup> Appellate Authority rejected the appeal and confirmed the levying of Fixed and Energy Charges at thrice the regular rate for 11 months.

3. Secondly, KERC (ES&D) Code 2000-01 came into force from 2000-01 and, as per Regulation 44.03 of the said code ***"if an appeal is not decided within a period of 120 days, the interest on the back bill if decided against the consumer should be restricted to 120 days only."*** Unfortunately, the 1<sup>st</sup> Appellate Authority failed to appreciate this provision and failed to mention the quantum of interest the Appellant is liable to pay to BESCO. This decision was challenged before the second Appellate Authority by making a deposit of Rs.49,523/- dated 25.05.2002, This deposit was made at the instance of the 2<sup>nd</sup> Appellate

Authority, but by an endorsement dated 27.08.2003, the 2<sup>nd</sup> Appellate Authority refused to entertain the second appeal on the ground that the appeal was time barred. Subsequently, the Appellant went to several Courts including the District and High Court seeking justice. Finally, at the intervention of Lok Adalat, the balance amount of Rs.99,000/- was paid to the 1<sup>st</sup> Respondent on 26.08.2006 and the Appellant felt that with this payment, the case had been closed. Surprisingly, the 1<sup>st</sup> Respondent raised an interest demand of Rs.1,98,093/- from May 2000 to February 2012.

4. Aggrieved by the decision of the 1<sup>st</sup> Respondent, the Appellant approached the 2<sup>nd</sup> Respondent seeking justice on 16.12.2012. The 2<sup>nd</sup> Respondent heard the matter and was convinced of the injustice done to the Appellant, but by its order dated 16.11.2012 granted part relief by restricting the interest portion from July 2000 to August 2006. If the 1<sup>st</sup> Appellate Authority had passed order restricting the back billing for 120 days, the case would have been closed then itself.

5. Secondly, the interest liability starts only after the date is crystallised.

6. Thirdly, when the Appellant approached the Hon'ble High Court, he was in arrears of the principal amount to BESCO and his prayer before the Hon. High Court was for interest waiver but the Advocate for the Appellant failed to bring this point to the notice of the Hon. High Court. However, the Hon'ble High Court passed order permitting the Writ Petitioner to pay the balance amount in five equal instalments but without specifically mentioning whether the amounts to be paid in instalments is towards the interest or the principal amount.

7. Further, the 1<sup>st</sup> Respondent should have levied Fixed and Energy Charges at thrice the regular rate for use of unauthorised excess load for a period of 6 months. In that case, Fixed Charges would come to Rs.10,395/- and Energy Charges would come to Rs.97,653/-.

8. In the light of the above, the Appellant prayed this Authority to set aside the orders of the 2<sup>nd</sup> Respondent and also set aside the claim of Rs.3,37,647/-preferred in the regular monthly bill for January 2012.

9. The 1<sup>st</sup> Respondent's comments were called vide letter No OMB/B/G-147/2013/186 dated 08.04.2013 and the 1<sup>st</sup> Respondent has furnished his comments vide letter No AEE/AAO(R)/MLR/F-181-186/2013-14 dated 27.04.2013.

10. In his comments, the 1<sup>st</sup> Respondent submitted that Internal Audit, K.G.F Division, during audit, had observed that the Appellant had used unauthorised excess load for a period of 11 months and, hence, the Consumer should be back billed for Rs.1,98,093/- for the period from September-1999 to July-2000 as per Regulation 44.03(a)(ii) of KEB Electricity Supply Regulations, 1988. Subsequently, the 1<sup>st</sup> Respondent, based on the audit report, advised the Appellant to pay a short claim of Rs.1,98,093/- vide letter AEE(Ele)/MLR/F-30/66720/05/2000. The Appellant, aggrieved by this demand, filed an appeal before the 1<sup>st</sup> Appellate Authority. The 1<sup>st</sup> Appellate Authority after hearing the matter, rejected the claims of the Appellant and, further, the Hon'ble High Court, on the Writ Petition filed by the Appellant, passed order directing the Appellant to pay the balance amount in 5 equal instalments. Later, the 2<sup>nd</sup> Respondent, on the application filed by the Appellant, passed the impugned order advising the Appellant to pay the interest from July 2000 to August 2006 by disallowing the interest claimed beyond September-2006. Hence, the 1<sup>st</sup> Respondent prayed this Authority to uphold the impugned order of the 2<sup>nd</sup> Respondent and to dismiss the appeal.

11. The case was taken up for hearing on 27.05.2013. On behalf of the Appellant, his Authorised representative, Shri M.A.Delvi was present and advanced his arguments. On behalf of the 1<sup>st</sup> Respondent, the Assistant Executive Engineer (EI) Malur Sub-Division appeared and submitted his arguments. Arguments from both sides got concluded on 27.05.2013.

12. The Authorised representative of the Appellant, during his arguments, reiterated the submissions made by the Appellant in the appeal memo.

13. The 1<sup>st</sup> Respondent argued that the Appellant had used unauthorised excess load of 181.50 HP during 1999-2000 and, taking into consideration the rate then prevailing, the amount worked out to:

- a) Fixed charges Per HP @ Rs.35/- for 181.50 HP x Rs 35x 3= Rs.19,057/-.
- b) Energy bill: Excess consumption over and above the maximum demand would come to 32,552 x Rs 2.50 x 2 - Rs 1,79,036/-.

14. The 1<sup>st</sup> Respondent further submitted that the Appellant had been back billed for Rs.1,98,093/- and levied interest of Rs.2,78,402/-. The Appellant had paid Rs.49,523/- by way of deposit at the time of filing the first appeal before the 1<sup>st</sup> Appellate Authority on 27.07.2000 and Rs.49,523/- as deposit before the 2<sup>nd</sup> Appellate Authority on 25.05.2002. Again, the Appellant had paid Rs.99,000/- on 26.08.2006 and, thus, the Appellant totally paid Rs.1,98,046/- from 27.07.2000 to 26.08.2006. However, he submitted that he would abide by the decision of this Authority in the matter.

15. Both parties were informed vide letter No.OMB/B/G-147/2013/191 dated 29.04.2013 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.

16. Having regard to the contending positions of the parties, the following issues emerge for our consideration:

**a) In the case of use of unauthorised excess load, whether the 1<sup>st</sup> Respondent can levy Fixed and Energy Charges at thrice the regular rate for the entire period of use of unauthorised excess load or has to be restricted to a maximum period of 6 months?**

**b) If the Appellate Authority takes more than 120 days to decide the appeal, whether the Appellant is liable to pay interest for further period beyond 120 days?**

17. In order to answer the above questions, we will have to first refer to Regulation 44.00 (a)(ii) of KEB Electricity Supply Regulations, 1988. The Regulation says that **"in case of existing L.T installations where an Electro Mechanical Meter is replaced by a Trivector Meter, if the maximum demand recorded is in excess of the sanctioned load that is indicated in the power supply agreement, during the very first month's meter reading immediately after fixing the trivector meter, then the consumer shall on demand pay to the Board for such extra recorded demand and also for the proportionate energy consumed by such excess demand, at thrice the normal rates applicable for such period as may be deemed justified in the circumstances of any given case subject to a maximum period of six( 6) months."**

18. The above extracts make it clear that the Distribution Company can levy Fixed and Energy Charges at thrice the normal rate applicable in the case of use of unauthorised excess load and even such levying has to be restricted to 6 months only. In the instant case, the 1<sup>st</sup> Respondent is found to have levied such charges for 11 months instead of restricting it to 6 months. Even the 1<sup>st</sup> Appellate Authority, while passing the order, seems to have not followed Regulation 44.00(a)(ii) of KEB Electricity Supply Regulations, 1988 and appears to have confirmed the demand raised by the 1<sup>st</sup> Respondent for a period of 11 months.

19. Secondly, the Appellant appears to have filed an appeal before the 1<sup>st</sup> Appellate Authority on 27.07.2000 and the Appellate Authority is found to have

taken more than 18 months to pass order. As per Regulation 44.03 of KERC (ES&D) Code 2000-01 ***"The First Appellate Authority shall decide the case within 120 days and communicate the orders there on to the consumer***

***and the office in use."*** Further, Para 3 of the said Regulations states that ***"If the dispute is not decided by the first appellate authority within above time limit, the consumer is not liable for payment of interest on the arrears for further period beyond 120 days."***

20. In the light of the above, Fixed and Energy Charges levied for more than 6 months in the case of use of unauthorised excess load have to be disallowed as not allowed under Regulations 44.00(a)(ii) of KEB Electricity Supply Regulations, 1988.

21) Secondly, the 1<sup>st</sup> Appellate Authority has taken 18 months to dispose the appeal, whereas the Regulations stipulate 120 days time limit for disposal of the appeal. Regulations say that ***"in cases where the time frame is not followed, the consumer is not liable to pay interest on the arrears beyond 120 days."***

This aspect appears to have been over looked by the 1<sup>st</sup> Respondent. Hence, interest levied for the entire period of 18 months i.e. the time taken to dispose the appeal by the 1<sup>st</sup> Appellate Authority is violative of Regulation of 44.03 of KERC (ES&D) Code 2000-01 and, hence, the Consumer is not liable to pay interest on the arrears for further period beyond 120 days.

22) In view of the discussions narrated above, the amount to be paid by the Appellant is calculated as under:

**Demand for 6 months:**

Fixed Charges - 6 Months	35x 3 times	Rs. 10,395-00
Energy charges	23384 units @ Rs.2.75 x 2	Rs. 1,28,612-00
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	Total	Rs.1,39,007-00

(Maximum Demand recorded for 6 months prior to noticing of use of unauthorised excess load)

09/1999		Rs. 16,311-00
12/1999		Rs. 20,994-00
01/2000		Rs. 18,637-00
05/2000		Rs. 17,542-00
06/2000		Rs. 39,713-00
07/2000		Rs. 25,810-00
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Total Demand	(+)	Rs. 1,39,007-00
Less paid on 27.7.2000	(-)	Rs. 49,523-00
		Balance
		Rs. 89,484-00
Add:Interest on Rs.89,484 X 2% X for 120 days		Rs. <u>7,158-72</u>
Liability as on 10.01.2002		Rs. 96,643.00
Add:Interest for 4 months (February-May 2002)		Rs. <u>7,731.00</u>
Total		Rs. 1,04,374.00
Less: Amount paid on 20.05.2002		Rs. <u>49,523-00</u>
Arrears as on 20.5.2002		Rs. 54,851.00
Add:Interest on Rs.54,851/- for 41 months @ 2%		Rs. 44,978.00
Add:Interest on Rs.54,851/- for 10 months @ 1%		Rs. 5,485-00
Total liability including interest for 51 Months from 10.01.2002 till 26.08.06		Rs.1,05,314-00
Less paid on 26.08.2006	(-)	Rs. <u>99,000-00</u>
<b>Net payable by the Appellant</b>		<b>Rs. 6,314-00</b>



23) In the light of the above discussions, I proceed to pass the following orders:

## ORDER

The impugned order passed by the 2<sup>nd</sup> Respondent vide No. CGRF/123/2011/2051-56 dated 16.11.2012 is set aside. The Appellant is directed to remit an amount of **Rs.6,314-00** to the 1<sup>st</sup> Respondent with immediate effect.

**In the result, the appeal succeeds**



(B.R.Jayaramaraje Urs)  
Electricity Ombudsman

1. Shri S.Muralidhar, KIADB Industrial Area, Malur (Represented by Shri M.A.Delvi, Advocate – Authorised Representative)
2. Consumer Grievance Redressal Forum, BESCO Corporate Office, K.R.Circle, Bangalore.
3. The Asst.Executive Engineer (Ele), O & M Sub Division, BESCO, Malur.
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