



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-124/2011/745

Dated 08.05.2012

M/s.Tranzgenz Solutions & Engineering
 Private Limited,
 #17/1, Roopena Agrahara,
 Bangalore-560068.

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

.. Appellant

Vs

1. The Asst. Executive Engineer(EI)
 S-8 Sub Division, BESCO,
 No.69, B.V.Narayana Reddy Bldg.,
 Hosur Main Road,
 Bommanahalli,
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 & Ombudsman) Regulations, 2004 against the orders passed by the Consumer Grievance Redressal Forum, Bangalore (hereinafter referred to as the

2nd Respondent) vide No CGRF/88/2011/502-507 dated 07.12.2011. The 2nd Respondent dismissed the complaint of the Appellant that the meter had been defective and the consumption for the disputed period had not been regulated in accordance with Clause 27.01 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Aggrieved by the 2nd Respondent's order (the impugned order), the Appellant has submitted his case as under:

2. The Appellant is an electricity consumer of BESCO (hereinafter referred to as the 1st Respondent) and electrical installation bearing R.R No S8 HT-8 stands in the name of the Appellant. The installation has been serviced with a contract demand of 250 K.V.A power.

3. The Appellant, fearing disconnection of power supply, had, through his Legal Counsel, requested this Authority to issue an Interim Order staying the operation of the impugned order till the case was disposed. This Authority, after hearing both the parties on 09.04.2012, issued Interim Order No.OMB/B/G-124/2011/578 dated 11.04.2012 staying the operation of the impugned order till the matter was adjudicated and also issued directions to the 1st Respondent not to disconnect the power supply till the matter attained finality.

4. The 1st Respondent vide demand No A.E.E(E)/S-8/ A.A.O/SA-1/222 dated 21.04.2011 advised the Appellant to pay a sum of Rs.8,20,095/- based on the M.T Division's letter dated 06.04.2011. The Appellant had earlier complained regarding defective meter and also requested for meter testing by paying the prescribed fee. The Meter Testing Division carried out the tests on 25.03.2011 and furnished letter on 06.04.2011. The letter stated that the meter was defective and, hence, the consumption to be regulated as per Clause 27.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka for a period between 01.09.2010 to 01.02.2011. The 1st Respondent did not make available the test report to the Appellant as per the Regulations. Based on the M.T. Division's letter, the 1st Respondent issued a bill for back period for Rs.8,20,095/- (period from 01.09.2010 to 01.02.2011).

5. The Appellant clarified that he had occupied the premises on 15.10.2010 and the average consumption taken to regulate the period was not in accordance with the provision 27.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Since the 1st Respondent failed to respond to the objection, the Appellant approached the 2nd Respondent for relief. The 2nd Respondent rejected his prayer and, hence, this appeal.

6. Comments of the 1st Respondent were called vide letter No OMB/B/G-124/2011/11487 dated 29.12.2011. The 1st Respondent furnished his comments on 06.01.2012.

7. The 1st Respondent, in his comments, submitted that on the basis of M.T Division's letter, a provisional back billing for Rs.8,20,095/- had been made for 5 months from September 2010 to January 2011. Back billing had been made based on three months average consumption (56033 units per month) recorded between June 2010 to August 2010. Further, objections had been called for from the Appellant. The Appellant filed objections on 28.04.2011 and the 1st Respondent looked into the objections and passed a speaking order vide letter No. AEEE/S8/M/HT/1375 dated 25.06.2011. In the letter, the Appellant had been required to pay Rs.8,20,095/- within 30 days.

8. Aggrieved by this order, the Appellant filed a complaint before the 2nd Respondent and the 2nd Respondent, after hearing the parties, passed orders confirming the decisions of the 1st respondent as valid. Hence, the 1st Respondent prayed this authority to confirm the orders of the 2nd Respondent and to disallow the appeal.

9. The case was taken up for hearing on 10.04.2012 and further on 20.04.2012. The arguments got concluded on 20.04.2012. On behalf of the Appellant, Advocate Shri M.A Delvi appeared and putforth his arguments and, on behalf of the 1st

Respondent, the Assistant Executive Engineer, S-8 Sub-Division, BESCO appeared and argued the case.

10. The Advocate for the Appellant argued that the Appellant received a bill for Rs.22,51,076/- in March 2011 for the month of February 2011. Since the bill had been on the higher side, the Appellant requested the 1st Respondent on 24.03.2011 to get the meter tested by paying Rs.500/- testing fees. When the consumer disputed the accuracy of the meter and paid the necessary testing fee, the 1st Respondent ought to have referred the meter to "Third Party Agency" approved by the KERC for testing. Instead, the 1st Respondent had referred the meter to M.T Division which was not a Third Party Agency approved by the KERC.

11. The Advocate added that as per Clause 27.01 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, the 1st Respondent ought to have regularised the quantum of energy used for the month. The Energy charges of Rs.22,51,076/- had been levied for February 2011 based on the consumption of 3,43,644 units. The Appellant disputed this bill and requested for meter test and after meter test and based on M.T.Division's letter, the 1st Respondent, in his letter dated 21.04.2011 addressed to the Appellant had stated that the consumption from September, 2010 to January, 2011 had been shown less and, hence, back billed for Rs.8,20,095/- for the back period taking into account three months' average consumption of power prior to the test.

12. The Advocate further submitted that the 2nd Respondent in its order had incorrectly referred to clause 27.04 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Clause 27.04 deals with ***Meter Not Recording*** category and not applicable to faulty/defective meters. In the present case, the meter had been defective and had not been showing the correct consumption and the consumption shown had been on the higher side.

13. The Advocate further argued that the Appellant occupied first floor of the building as tenant from October, 2010 and there are three floors in the Buildings.

Average consumption of three floors prior to September 2011 had been around 50,000 units per month and the Appellant occupied second floor of the building in December 2010 and third floor in February 2011. Thus, consumption during October to December had been less i.e. 15,000 units per month. The Appellant contested the bill pertaining to February 2011 for Rs.22,51,076/- which had been received in the month of March 2011. The Appellant had no dispute relating to other months and, hence, the 1st Respondent should not have gone back to previous months. The 1st Respondent, instead of rectifying the bill pertaining to February 2011 in accordance with clause 27.01 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, had gone back to previous months and back billed, which was incorrect. Hence, the Advocate prayed this Authority to set aside the impugned orders of the 2nd Respondent and to direct the 1st Respondent to revise the bill in its entirety.

14. The 1st Respondent argued that Clause 30.13 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka prescribed Rs.500/- towards fee for meter testing relating to H.T installations and, since the Appellant had complained that more consumption had been shown for the month of February 2011, the meter had been referred to M.T Division for testing. The M.T. Division had gone and downloaded the data on 25.03.2011 and, since the data had not been satisfactory, the Asst Executive Engineer, M.T Division (H.T Rating Sub-Division) consulted M/s.Larsen & Toubro (for short, L&T), the manufacturers of the meter. M/s. L&T analysed the data and had given a report on 29.03.2011 stating that the meter had recorded 500.75 units with a multiplier effect of 300. Further, M/s. L&T reported that the meter had failed to record because of internal memory component failure and suggested not to consider the consumption recorded by the meter under reference as authentic.

15. Based on the L&T report, the M.T Division wrote to the 1st Respondent that the L & T report had indicated that the meter was defective due to internal component failure and, hence, the consumption recorded should not be considered for billing. Further, the M.T. Division had observed that the consumption recorded

for September 2010, October 2010, December, 2010 and January 2011 had been less and, therefore, the meter should be changed immediately, and based on this, back billing should be made for back period from September 2010 to January 2011. Based on this letter, the 1st Respondent issued a bill for the back period from 01.09.2010 to 01.02.2011. This had been issued on 02.04.2011. Back billing for Rs.8,20,095/- had been made for the period from September to January 2011 (excluding February, 2011). Earlier, the 1st Respondent had issued a bill for Rs.22,51,076/- relating to February, 2011 and, subsequently, on the basis of M.T Division's letter revised the bill for Rs.8,20,095/-. The 1st Respondent had categorised the meter as not recording. The 1st Respondent had taken three months' average consumption preceding September 2010 viz., June, July, & August. Further, the 1st Respondent clarified that KERC amendment had come into effect from 22.07.2010 which allowed reference to Third Party Agency in case the consumer disputed the accuracy of the meter. The 1st Respondent confirmed in his arguments that the M.T Division in their letter dated 06.04.2011 addressed to the S-8 Sub-Division had conveyed that the meter had been defective due to internal component failure.

16. Both parties were informed vide letter No.OMB/B/G-124/2011/612 dated 13.04.2012 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.

17. Having regard to the contending positions of the parties, the issues that emerge for our consideration are:

a) Whether the Meter Testing Division's recommendation to back bill for Rs.8,20,095 is based on the findings of the meter test or based only on assumptions?

b) Whether the Electrical Sub Division is right in accepting such reports and raising demand for Rs.8,20,095/- for back period from September 2010 to January 2011?

18. It is undisputed that the Appellant has received a bill for Rs.22,51,076/- in the month of March, 2011 for the month of February, 2011 and it is also not in dispute that the Appellant disputed the accuracy of the meter. From the documents, it is seen that the Appellant has disputed the accuracy of the meter and, further, he paid the required fee for meter testing. As per clause 27.01 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, when the consumer disputes the accuracy of the meter, he shall give notice to the Licensee and the Licensee has to refer the meter for inspection/testing to "Third Party Agency" approved by the KERC under intimation to the Consumer. In the instant case, the Appellant (a) has disputed the accuracy of the meter (b) has given a notice and (c) has paid the prescribed fee for meter testing. Such being the case, the 1st Respondent, instead of referring the meter to the Third Party Agency, has wrongly referred the meter to M.T Division for testing which is found to be totally incorrect and amounted to violation of Clause 27.01 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

19. Further, the M.T Division has conducted meter test and also consulted L&T Company who are the manufacturers of the Meter. L&T made independent analysis of the data received from the meter and made the following observations:

....."this meter has recorded a consumption of 90.2321 in load survey from 01.03.2011 00:hrs to 25.03.2011 14:00 hrs, whereas in billing data it has recorded consumption of 500.75 units for the same period."

"This clearly indicates that the meter is defective since both the reading should match for a normal working meter. Please note that this would have happened due to memory component failure inside the meter. We request you not to consider the consumption recorded by this meter as

authentic. Also it is not possible for us to indicate the exact date of failure since no records are available."

"In view of the above, we request you to consider this report for your records and scrap the meter at your end since the meter is out of warranty & not possible to repair because of non-availability of required components in international market. We hereby attach a copy of downloaded data for your ready reference."

20. Based on the findings of the L & T Company, the Asst Executive Engineer, M.T.Division wrote to the 1st Respondent that ***"As per the analysis report of L&T Company, it is indicated that the meter is defective due to internal component failure. Hence, the consumption recorded should not be considered for billing. And also it is observed that the consumption of September-2010, Oct-2010, Dec-2010 and Jan-2011 are less. Therefore, the meter to be changed immediately, until that average consumption to be considered for billing and it should be observed that previous billing months & short claims to be collected, if any, for previous months also."***

21. Under Clause 27.02 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, the 1st Respondent's qualified engineer can take up periodical inspection of meter and based on the findings of the test, the 1st Respondent can either recover the differential amount if the meter is found to be slow recording or will pay the differential amount if the meter is found to be fast recording. However, such payments will be limited to a period not exceeding 6 months.

22. In the instant case, the 1st Respondent has referred the meter to M.T Rating Division for testing. Under Clause 27.01 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, the 1st Respondent cannot refer the meter to M.T Division when the consumer has disputed the accuracy of the meter and requested for meter test by an independent agency by paying the prescribed

fees. The Third Party Agency has been designated by the KERC. The 1st Respondent has issued a bill for Rs.22,51,076/- for the month of February 2011 and the Appellant disputed the bill and requested for meter test. The 1st Respondent arranged for Meter test by M.T Division and the M.T Division conducted tests but could not come to any definite conclusion regarding the working of the meter. Hence, it made consultations with L&T, who are the manufacturers of meters. L&T, after analysing the data received from the meter, concluded that the meter was defective and requested the M.T Division not to consider the consumption recorded by this meter as authentic. Although L & T has not made any reference regarding less consumption for the period from September 2010 to Jan 2011, the M.T Division on its own and without any basis while writing to the Electrical Sub Division observed that ***"the consumption for September 2010, October 2010, December 2010 and January 2011 are less. Therefore, the meter to be changed immediately and until that average consumption to be considered for billing and it should be observed that previous billing months & short claim to be collected, if any, for previous months also."***

23. The 1st Respondent, without verifying whether such recommendation for back billing is based on the findings of the meter test or it is based on assumptions, blindly back billed for Rs.8,20,095/-. There appears to be no basis for M.T Division to advise the 1st Respondent to back bill for the period from September 2010 to January 2011. Thus, the 1st Respondent seems to have made series of errors in the instant case.

24. Firstly, the 1st Respondent has failed to refer the meter to the Third party Agency approved by the KERC when the Appellant disputed the accuracy of the meter.

25. Secondly, instead of rectifying the February 2011 bill, the 1st Respondent has gone back and back billed for the previous months from September 2010 to January 2011 based on M.T Division's letter which suggested that consumption was less for 5 months from September 2010 to January 2011 as compared to the earlier months.

Such recommendations appear to have been made not based on the findings of the meter test nor on the recommendation of the L&T, but by referring to the consumption pertaining to the period from September 2010 to January 2011, which showed less consumption.

26. It is not correct to expect the energy consumption to be even and uniform all the time in an electrical installation. It is also irrational to suspect foul play whenever fall occurs in power consumption. Fall may be due to various reasons like change of economic activity, change of tenant and amount of space occupied in a building etc., There are no hard and fast rules that consumption in any installation should always be even and uniform. Licensee cannot resort to back billing whenever there is a fall in electrical consumption in any installation.

27. In the present case, there was a change of tenant in the building and the Appellant being a tenant occupied the building gradually floor-wise after entering into lease agreement with the Land Lord. From the lease deed, it is evident that the Appellant has occupied the 1st floor of the building in October 2010, second floor in December 2010 and third floor in February 2011. In such circumstances, consumption is linked to the amount of space occupied and the type of economic activity chosen to be run in the building. Naturally, in the present case, consumption would be less in October 2010 and there will be gradual increase in December 2010 and reaches optimum level when all the three floors are occupied and economic activities are undertaken to the fullest possible extent. In any building, tenants keep changing, activities also change and accordingly energy consumption varies. There will be fluctuation in consumption. Without keeping any of these factors in mind, the 1st Respondent appears to have come to a hasty conclusion that the consumer should be back billed because there is a fall in power consumption during some months.

28. Thirdly, when the L&T Company gave a report that the meter had been defective, M.T.Division/1st Respondent should have referred the meter to the Third Party Agency for adjudication, instead they themselves have categorised the **meter**

as not recording under Clause 27.04 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Further, the M.T Division has not given any specific technical findings like what % the meter has fast recorded and what % the meter has slow recorded etc., M/s. L&T, in its letter addressed to the M.T.Division, stated that ***"we request you not to consider the consumption recorded by this meter as authentic. Also, it is not possible for us to indicate the exact date of failure since no records are available."***

29. In spite of such a report, the M.T Division recommends that differential amount by way of short claims be recovered on the ground of less consumption from the Appellant. This decision is not based on test findings nor on the recommendation of L&T Company. The M.T Division, without assigning technical reasons has, like a layman, recommended for back billing for recovery of Rs.8,20,095/-, which is incorrect and legally untenable.

30. In the circumstances discussed above, the impugned orders passed by the 2nd Respondent, upholding the decision of M.T.Division and the 1st Respondent, deserve to be set aside and, hence, the following order:

ORDER

31. For the foregoing reasons, back billing made for the months i.e. September 2010 to January 2011 for an amount of **Rs.8,20,095/- is quashed**. The 1st Respondent is directed **to adjust Rs.8,20,095/-** against the Appellant's future energy bills.

In the result, **the appeal succeeds.**


(B.R.Jayaramaraje Urs)
Electricity Ombudsman

1. M/s.Tranzgenz Solutions & Engineering Private Limited, #17/1, Roopena Agrahara, Hosur Main Road, Bangalore-560068 (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), S-8 Sub Division, BESCOM, No.69, B.V.Narayana Reddy Bldg., Hosur Main Road, Bommanahalli, 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