



# BEFORE THE ELECTRICITY OMBUDSMAN

9/2, 6<sup>th</sup> Floor, Mahalakshmi Chambers, M.G Road, Bangalore – 560 001

**Present: B.R.Jayaramaraje Urs**  
**Electricity Ombudsman**

**Case No.OMB/B/G-210/2015**

**Dated : 25<sup>th</sup> June 2015**

Shri Abbaiah  
No.68.Jakkasandra  
Bangalore-84  
(By Sri N.J.Ramesh, Adv)

... Appellant

V/S

1. The Assistant Executive Engineer(EI),  
O&M,S-11 Sub-Division, BESCOM  
HSR Lay Out,Bangalore-560102  
(Party in person)

2. The Chairperson  
CGRF, Bangalore Urban District,  
BESCOM, West circle,05,3rd stage  
Bhimajyothi HBCS Layout,Bangalore  
Next to Chord Hospital, Basaveshwara  
Nagar, Bangalore-560079

... Respondents

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1. This is an appeal under clause 21.02 of KERC (CGRF & Ombudsman) Regulations,2004 against the orders passed by CGRF, BESCOM, Bangalore

Urban District, Bangalore(here in after referred to as the 2nd Respondent) vide order No. CGRF /Chairman/West Circle/6609-13 dated 09/3/2015 in regard to the complaint filed by the appellant regarding issue of back bill by the 1st Respondent for Rs. 2,52,381/- on grounds of slow recording of meter by 90.82%.Aggrieved by the orders passed by the CGRF, the appellant has submitted his case as under:

(i). The appellant is the owner of commercial Building bearing No 68, Jakkasandra,Bangalore which comprises three floors. All the three floors have been let out from time to time. There is an electrical installation bearing R.R No 4 SP 2705 serviced in 2002 for 30 HP.

(ii). On 24.06.2014, AEE(EI) Vigilance, BESCO along with police constables, inspected the installation and the premises of the appellant, Conducted MAHAZAR. After the inspection, the squad informed the appellant that the meter had a slow recording by 90.82%.In the MAHAZAR, they made a mention regarding missing seal and intact of main cover. Noting the connected load, the vigilance informed the appellant that the missing of the seals showed theft of electricity and hence he would be liable for criminal action. The Appellant was forced to sign some papers which was in English which language he was not conversant with and hence he did not understand the contents of the report. He signed the MAHAZAR fearing the police presence. At that time, the appellant informed the vigilance officer that hitherto the building had been let out for the purposes of running Bar and Restaurant which would be kept opened till midnight. Due to the keeping of bar and restaurant opened till midnight, there was more consumption of electricity. Later, by obtaining injunction order from the Civil Court, tenants were evicted.

Subsequently, it was let out to students( paying guests). Students generally do not consume much electricity and switch off lights before 10 PM in the night. Therefore consumption was not as much as it used to be when there were bar & restaurant in the building. However, the vigilance squad was not ready to listen to any of these explanations. Even, they were not ready to verify the statement given by the consumer. Thereafter, on 10.06.2014, the 1st Respondent issued a provisional notice stating that meter had a slow recording by 90.52% and therefore as per Regulation 27.03 Electricity Supply & Distribution Code(ES&D Code) the appellant was liable to pay Rs. 2,52,381/- for slow recording of the meter and also being the difference at normal rates based on the percentage of error, for a period of 6months preceding the test. Further, the notice directed the appellant to file objection, if any, and to pay the amount within 30 days which is against to ES&D code. In fact BESCO has followed the repealed law which was not in operation during the relevant period and hence the appellant is not bound by repealed law. However, following the notice, the appellant filed objections within 15 days urging the same grounds. After filing objections, no hearing was conducted and nothing was heard from the 1st respondent. The Assessing Officer without considering the objections filed by the appellant, proceeded to pass final assessment orders.

(iii). As a matter of fact, the vigilance, in the instant case without conducting meter test, simply recorded that the meter had a slow recording by 90.52%. Further, the vigilance took the signature of the appellant on the MAHAZAR without explaining the contents. The content was in English and which language he was not able to read

and write. This fact is admitted by the 1st Respondent at para 2 of his replies.

(iv). The 1st Respondent, though not explained the contents of the MAHAZAR to the appellant, has stated in his replies that he had explained the contents of the MAHAZAR to the appellant when the MAHAZAR perse does not say anything about explaining the contents of the MAHAZAR to the appellant. Furthermore, the Vigilance, after conducting MAHAZAR and after raising provisional bill referred the issue to MT Rating Division for testing. This raises doubts in the mind of the appellant that the earlier test was not done correctly and was done behind the back of the appellant. Even after receiving the alleged report from the MT Rating Division, the 1st Respondent did not make any correspondence with the appellant on the findings given by the MT rating Division nor copy of the report was made available to the appellant. Till now, MT Rating Division has not furnished rating report to the appellant nor provided opportunity to the appellant to rebut the report or file objections, if any.

2. Aggrieved by the final assessment orders passed by the 1st Respondent, the appellant filed a complaint before CGRF, Bangalore Urban District, Bangalore. The CGRF conducted one hearing and advised the appellant to file written arguments, if any, within 15 days. Accordingly, the appellant filed written arguments on 30.09.2014 and obtained acknowledgment. But CGRF did not pass final orders even after a lapse of 6 months. When the appellant went to pay the regular bills at Bangalore-1, the staff there informed that his account had been locked and hence they could not receive the amount. However, he could approach BESCO for

further information in the matter. The Very next day on 27.03.2014, the appellant approached BESCO only to be told that CGRF had remanded the case dated 09.03.2015 to the AEE(EI) to pass fresh orders following Regulation 27.03 of COS based on the MT Rating Division's test report dated 16.01.2015 which had reported slow recording of meter by 66.87%. Earlier, though CGRF had reserved the case for orders, did not pass orders for more than 6 months. only when CFRF pronounced the order, the appellant came to know that it had passed orders relying on MT rating Division's report dated 16.01.2015 which had reported 66.87% slow recording of the meter. The test report was neither presented on 08.09.2014 nor it was brought to the knowledge of the appellant. Thus, CGRF has erred on two counts i.e (a) not notifying the alleged test report it received from the MT rating Division to the appellant during the hearing and( b) not giving opportunity to the appellant to file objections on the alleged report filed by the MT Rating Division before CGRF passed the impugned order .This amounts to CGRF passing the impugned order behind the back of the appellant. The appellant came to know from the CGRF order that it had falsely mentioned in its order that it had asked the appellant to appear on 31.01.2015 and that the appellant had not appeared. This way, gross error has been committed by CGRF and hence prayed this authority to set aside the order passed by the CGRF.

3. The 1st Respondent's response was called vide this office letter No. OMB/B/G-210/2015/509 dated 15.05.2015.

4. The 1st respondent in his statement of objections stated that the vigilance Squad had inspected the subject installation on 24.05.2014 and found the meter slow recording by 90.52%. On the basis of this report, the 1st Respondent issued a notice to the appellant to pay Rs. 2,52,381/- dated

10.06.2014. Since no objection had been received from the appellant, final assessment orders had been passed. Against this orders, the appellant filed a complaint before CGRF dated 24.06.2014 and CGRF during the hearing directed the 1st Respondent to produce the meter before it. In compliance with the directions, meter had been produced before CGRF and after production, CGRF during hearing referred the meter to MT Rating Division for testing. MT Rating Division, after conducting test, presented its report before CGRF on 16.01.2015 which conveyed slow recording of the meter by 66.87%.

5. The 1st Respondent added that as per CGRF's order, he issued a revised orders advising the appellant to pay Rs. 53,352/- on 17.03.2015. Aggrieved by CGRF's order, the appellant has filed this appeal.

6. The first Respondent in his arguments admitted that he had not referred the meter to MT Rating Division for testing at any point of time.

7. The case was taken up for hearing on 25.05.2015 and arguments from both side got concluded on 18.06.2015. On behalf of the appellant, Shri N.J. Ramesh, Advocate advanced his arguments and on behalf of BESCO, the AEE(EI) S-11 Sub-division appeared and put forth his arguments. Both parties, during the hearing, reiterated their submissions made in the appeal memo and statement of objections respectively.

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

(a) Did CGRF during the course of hearing refer the meter in question to MT rating Division for testing?

(b) When CGRF referred the meter to MT rating Division, whether CGRF notified the reference to the appellant?

(c) Whether CGRF has passed the impugned order without notifying the MT Rating Division's report to the appellant and without giving opportunity to the appellant to file his objections?

9. In the present case the appellant has questioned the short claims made by the 1st Respondent on grounds of slow recording of the meter by 90.52%. It is also his grievance that the 1st Respondent has not given any reasons for coming to the conclusion that the meter had a slow recording by 90.52%. Since he did not get satisfactory replies from the 1st Respondent for slow recording, he appeared to have approached CGRF. CGRF during the hearing appeared to have referred the meter to MT Rating Division for testing. Unfortunately, CGRF seems to have not notified the appellant regarding reference made to MT Rating Division.

10. Further, even after getting report from MT rating Division, CGRF seems to have not notified the test report to the appellant and appears to have passed the impugned orders straight away. CGRF in its order has directed the 1st Respondent to pass assessment orders following clause 27.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and as per MT Rating Division's test reported dated 16.01.2015 which reported 66.87% slow recording of the meter.

11. CGRF order does not say whether it had advised MT rating Division to issue notice to the appellant before conducting meter test and to do test in the presence of the appellant and to draw MAHAZAR and obtain the signature of the appellant on the MAHAZAR. Even the MT rating Division appears to have not issued any notice to the appellant before conducting

test which was obviously carried out at the instance of CGRF. Thus it becomes clear that MT Rating division has conducted meter testing at the instance of CGRF but without notifying the same to the appellant. Similarly, CGRF is found to have not given opportunity to the appellant to rebut or to file objection, if any, even after receipt of test report. It appears that though CGRF has obtained test report from the MT rating division, it has failed to notify the findings of the MT rating Division to the appellant and found to have passed orders behind the back of the appellant which certainly amounts to denying opportunity to the appellant to file objection, if any, on the test report. The appellant is entitled to receive a copy of the test report. However, CGRF is found to have not supplied a copy of the test report to the appellant nor found to have called for objections, if any, with regard to the test report submitted by the Rating Division. Thus, CGRF itself is found to have not followed the principles of natural justice while passing the impugned order which has rendered the entire proceedings void. CGRF at the first instance is found to have not followed a transparent procedure while referring the meter to MT rating Division for testing i.e. without notifying it to the appellant and later after receipt of test report from the MT rating Division, CGRF without giving opportunity to the appellant is found to have straight away accepted the test report in a non transparent manner and passed orders. Hence, CGRF could not have directed the 1st respondent to pass orders based on 16.01.2015 test report which is a obviously a flawed one. In view of the above discussion, it is considered necessary to remand the case to the 1st Respondent to pass fresh assessment orders after affording opportunity to the appellant.

### **ORDER**



For the foregoing reasons, the assessment orders of the 1st respondent and the impugned orders of the 2nd Respondent are set aside. Case is remanded to the 1<sup>st</sup> Respondent to hear the case afresh and pass orders on merits without getting influenced by the impugned orders passed by the CGRF.

In the result the appeal succeeds.



(B.R Jayaramaraje Urs)  
Electricity Ombudsman

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2. The Assistant Executive Engineer(EI), O&M,S-11 Sub-Division, BESCO, HSR Lay Out, Bangalore-560102
3. The Chairperson, CGRF, Bangalore Urban District, BESCO, West circle, 05, 3rd stage, Bhimajyothi HBCS Layout, Bangalore, next to Chord Hospital, Basaveshwara Nagar, Bangalore-560079.
4. Managing Directors of ESCOMs.
5. PS to Hon. Chairman, KERC
6. PS to Hon. Member (A), KERC
7. PS to Hon. Member (M), KERC
8. PS to Secretary, KERC

