



# Before the Electricity Ombudsman

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

Present: **B.R.Jayaramaraje Urs, IAS (Retd.)**

**Electricity Ombudsman**

**Case No.OMB/B/G-182/2014/407**

**Dated 08.09.2014**

M/s.Anriya Dwellington Apartment Assn.,

No.1, 1<sup>st</sup> Min, Lottegollahalli,

Dollars Colony, RMV 2<sup>nd</sup> Stage,

**BANGALORE-560094**

**(Represented by Sri M.A.Delvi,**

**Authorised Representative)**

.. **Appellant**

**Vs**

1. The Asst. Executive Engineer(EI)

O & M C-6 Sub Division,

BESCOM,

Mathikere,

**BANGALORE-560054**

2. The Chairperson

Consumer Grievance Redressal Forum

Office of the Superintending Engineer,

BESCOM, West Circle,

05, 3<sup>rd</sup> Stage,

Bhimajothi HBCS Layout,

Basaveshwarnagar,

**BANGALORE-560079**

.. **Respondents**

1. This is an appeal under Clause 21.02 of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004 against the order passed by the Consumer

Grievance Redressal Forum, BESCOM, Bangalore Urban District (herein after referred to as the 2<sup>nd</sup> Respondent) vide case No.CGRF/235/2013-14/04-06.2013/1159-65 dated 28.05.2014 in respect of Appellant's plea for issue of directions to the Assistant Executive Engineer, O & M C-6 Sub Division, BESCOM, Mathikere, Bangalore-560054 (hereinafter referred to as the 1<sup>st</sup> Respondent) to withdraw the short claims made for Rs.37,79,404/- on account of alleged non-application of multiplying constant-10 from 04.06.2005 to 06.04.2013. Aggrieved by the order passed by the 2<sup>nd</sup> Respondent, the Appellant has submitted his case as under:

2. The Appellant, M/s. Anriya Dwelling Apartment Association is a registered body catering to the civic needs of the apartment dwellers. Totally, there are 158 individually owned flats in the block of apartments and each flat is provided with a separate electrical connection under LT-2(a) tariff. Along with the lighting connection to the apartments, a separate electricity connection is provided for general purpose installation for yard lights, lifts, water pump & telephone services. This installation was serviced on 20.11.2004 with a sanctioned load of 22 kW and installation was assigned RR No MSC6EH 4852. There was no dispute till the MT Rating Division inspected the installation on 06.04.2013. During the inspection, the M.T. Rating Division observed that the meter provided to the installation had a multiplying constant of 10 and the meter reader, during the meter reading, had omitted to apply multiplying constant of 10 and omission to apply the multiplying constant resulted in erroneous billing and billing had been done only for 1/10 of the actual power supplied to the consumer and, therefore, short claims to be made from the date of fixing of new meter i.e. from 04.06.2005 to 06.04.2013. The 1<sup>st</sup> Respondent, based on MT Rating Division's report, issued a Demand Notice on 17.04.2013 advising the Appellant to pay Rs.37,79,404/- within 30 days from the date of receipt of the notice failing which power supply would be disconnected. The notice was issued in utter violation and disregard to the provisions of Clause 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. The Appellant, after airing his grievance before various Authorities, was advised to approach the 2<sup>nd</sup> Respondent for settlement of his grievance and, accordingly, the Appellant filed Form No A before the 2<sup>nd</sup> Respondent. The 2<sup>nd</sup>

Respondent, which listed the case for future date for the parties to adduce evidence, suddenly passed a final order which is prima facie a flawed one and, hence, liable to be set aside.

3. There are 157 flats in the block of apartment and, out of these, 60 flats have been let out and 28 flats have changed hands and, hence, notice issued to the present occupants to pay the arrears is against the law and liable to be cancelled.

4. The 1<sup>st</sup> Respondent's comments were called vide letter No OMB/B/G-182/2014/372 dated 19.06.2014.

5. The 1<sup>st</sup> Respondent, in his statement of objections, submitted that the contention of the Appellant that the matter had not been fully heard by the 2<sup>nd</sup> Respondent was not true. Further, the subject installation bearing R.R No MSC6EH4852 had been serviced with a sanctioned load of 22 kW in the year 2004 for the purpose of running lift, water pump etc. At the time of servicing the installation, metre had been provided DZG,DV604IR,3Ph,3x 10-40 Amps, Serial No.10769009 details for recording the consumption and billing. From 20.11.2004 to 04.06.2005 bill had been issued as per the consumption recorded in the meter.

6. The 1<sup>st</sup> Respondent added that on 04.06.2005 the burnt out meter had been replaced with new CT comprising of 50/5 AMPS ratio AMPS Meter. As per this arrangement, the billing should have been done by multiplying the units recorded in the meter by multiplying constant equal to  $50/5A=10$ , but, inadvertently, the bills had been issued based only on the consumption recorded in the meter without applying multiplying constant 10. Thus, only 1/10 of the actual consumption had been billed from 04.06.2005 till 06.04.2013. This had been detected by the MT Rating Division during routine rating of the installation on 06.04.2013. Based on this report, notice had been issued to the consumer to pay Rs.37,79,404/- towards the unbilled consumption for the period between 04.06.2005 to 06.04.2013 amounting to Rs.35,05,440/- plus back billing charges for usage of about 6 kW's towards running BSNL exchange falling under commercial tariff(LT-3) for a period of

12 months as per Clause 42.02 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Thus an amount of Rs.37,79,404/- demanded is a genuine claim which was in accordance with Clause 29.08 and 42.02 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and, hence, prayed this Authority to dismiss the appeal and to confirm the order passed by the 2<sup>nd</sup> Respondent.

7. The case was taken up for hearing on 18.07.2014 and arguments were concluded on 22.08.2014.

8. On behalf of the Appellant, Shri M.A.Delvi, Authorised Representative appeared and put forth his arguments and for the 1<sup>st</sup> Respondent, Shri Vinayaka, Law officer, BESCO made appearance and advanced arguments.

9. The Authorised Representative of the Appellant argued that the 2<sup>nd</sup> Respondent had partly heard the matter on 07.03.2014 and still material evidence had to be adduced by the Appellant on a future date of hearing, but all of a sudden, the 2<sup>nd</sup> Respondent passed the impugned order. Even this order bore the signature of only two Members, although the matter had been heard by three Members. Thus, the proceedings have been vitiated and, therefore, such proceedings are liable to be quashed. In addition, the 1<sup>st</sup> Respondent has failed to consider the pleas put forth by the Appellant and, therefore, violated natural justice.

10. The Authorised Representative added that the Appellant is not aware of BESCO fixing the new meter in place of the old metre. Further, at the time of servicing though the Appellant installed required capacity of transformers, the 1<sup>st</sup> Respondent failed to take any steps to install the required meter for energy audit purposes.

11. The Authorised Representative further contended that during the past ten years, ownership of the flats has changed hands and most of the existing occupants are retired persons with limited resources. Besides, bills of the past consumption

cannot be imposed upon them as it amounts to illegality. Even the Courts have held in numerous cases that the arrears cannot be collected from the new occupants. In the instant case, the 1<sup>st</sup> Respondent has shown total negligence and, therefore, cannot claim blanket shelter and exemption under the provisions of the Limitation Act. Moreover, in the present case, 1<sup>st</sup> Respondent has not verified the consumer dossier but only on the basis of MT Rating Division inspection report and mahazar has made short claims which do not come under the category of erroneous billing under Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and, therefore, the 1<sup>st</sup> Respondent cannot make short claims for the entire period of 9 years but can claim charges only for a period of 12 months preceding the date of inspection at twice the tariff applicable to the purpose for which the energy is misused under Clause 42.02 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

The Authorised Representative, contesting the short claims, added that the 1<sup>st</sup> Respondent has failed to follow the procedure laid down under clause 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka while making supplementary claims and also has not passed provisional assessment order giving 15 days' time to the Appellant to file objections, if any, nor passed final assessment order after considering the objections filed by the Appellant and, hence, prayed this Authority to set aside the demand and issue directions to the 1<sup>st</sup> Respondent to pass fresh assessment order following the procedure.

12. The Law officer, BESCO appearing for the 1<sup>st</sup> Respondent argued that the 2<sup>nd</sup> Respondent has not committed any irregularities as made out by the Appellant under Clause 8.02 of KERC (CGRF & Ombudsman) Regulations, 2004. As per Clause 8.02 of KERC (CGRF & Ombudsman) Regulations, 2004, quorum for the 2<sup>nd</sup> Respondent to conduct proceedings is two and Members present during the meeting have to sign the order as per Clause 8.03. In the present case, initially, when the Appellant filed complaint before the 2<sup>nd</sup> Respondent, there were three Members and, during the course of the hearing, one of the Members demitted his office as he completed his tenure and the remaining Members conducted the proceedings and

passed order. As per Regulation 8.02 of KERC (CGRF and Ombudsman) Regulations, 2004, even in the absence of one Member, proceedings could be continued and order could be passed by the remaining two Members. Just because one Member is shown on the top of the order, and not signed the order, does not mean that a particular Member after participating in the proceeding has failed to sign the order and, thus, it will not vitiate the order.

13. The Counsel for the 1<sup>st</sup> Respondent added that installation bearing R.R No.MSC-6 EH 4852 was serviced on 20.11.2004 with a sanction load of 22 kW and meter was also fixed for recording the consumption at that time. As this metre burnt out, it was replaced on 04.06.2005 and the new metre had a multiplying constant of 50/5 AMPS-ratio which is equivalent to 10 and the Metre Reader while reading the metre was supposed to multiply the consumed unit by a multiplying constant of 10. In the instant case, the meter reader failed to apply multiplying constant of 10. Thus, only 1/10 the consumption was billed. On 06.04.2013, the MT Rating Division, during their routine rating, observed non-application of multiplying constant of 10 and having issued erroneous bill previously and, therefore, suggested to the concerned to make fresh assessment for the period from 04.06.2005 to 06.04.2013.

14. The Law Officer BESCO further argued that Clause 27.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka deals with correctness of meter and the present case comes under the category of erroneous billing under Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and, in the instant case, the meter reader had omitted to apply the relevant multiplying constant while billing which resulted in erroneous billing and, hence, short claims cannot be limited to 12 months as contended by the Appellant and short claims have to be made for the period such erroneous billing has been done. Such erroneous billing may be reported by any agency including the MT rating Division and such bills are liable to be recovered without any time limits.

15. The Counsel for the 1<sup>st</sup> Respondent contesting the arguments of the Appellant that he has not been given opportunity to file his objections submitted that the 1<sup>st</sup> Respondent has issued notice to the Appellant under Clause 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka giving 30 days' time. Pursuant to this notice, the Appellant has filed his objections on 26.09.2013 and after considering these objections, the 1<sup>st</sup> Respondent passed the final assessment order on 23.05.2013

16. Both parties were informed vide letter No.OMB/B/G-182/2014/382 dated 23.07.2014 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 case on hand comes under Regulation 27.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka as contended by the Appellant?***

***b) Whether the 1<sup>st</sup> Respondent has followed the procedure while making supplementary claims for Rs.37,79,404/-?***

18. To answer the first question, we have refer to mahazar report drawn by the Executive Engineer MT Division dated 06.04.2013. The First Para of the mahazar deals with the functioning of the meter and records that there is no defect in the functioning of the meter and finds meter recording error as coming within limits. The second paragraph of the mahazar says ***"on verification from the RR docket there is no reference for fixing of the meter on the date of service i.e.***

**20.11.2004. However, there is a reference in the RR Register on 04.06.2005 for fixing of the said meter due to burning out of previous meter bearing make DZG, 10-40A, Type-DV604IR, Sl.o.10769009, final reading 01853.”** Mahazar further notes **“that the metre constant K-10 is left out in the bill from the date of replacement of old metre i.e. 04.06.2005 and that this is explained to the Joint Secretary of the Association, Smt.Suchitra. Smt.Kavita, Manager.”** Last para of the Mahazar advises the 1<sup>st</sup> Respondent to make short claims from the date of fixing new CTs as per regulations from 04.06.2004 till 06.04.2013.

19. It appears from the Mahazar that the Executive Engineer, M.T.Rating Division, after inspecting the meter, took a decision to verify R.R Docket and R.R Register of the Consumer to check whether the Meter Reader had applied multiplying constant-10 correctly or not and the cross checking revealed that meter reader had not applied the multiplying Constant-10 in respect of the subject meter and, hence, advised the 1<sup>st</sup> Respondent to make short claims from the date of fixing the new meter i.e. 04.06.2005. Mahazar establishes that the Executive Engineer, M.T.Division not only has inspected the installation but also verified the dossier of the Consumer and, on verification, he found the multiplying constant 10 is left out in the bill from 04.06.2005 and, therefore, advised the 1<sup>st</sup> Respondent to make short claims. Mahazar settles that the case on hand does not come under Clause 27.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka as it does not pertain to metre dispute and, hence, does not require the 1<sup>st</sup> Respondent to make short claims for a period of 6 months preceding inspection. Mahazar confirms that during verification of consumer dossier i.e. RR Register, the Executive Engineer (EI), M.T.Rating Division noticed the erroneous billing from 04.06.2005 i.e. from the date of fixing of new CTs on account of non-application of multiplying constant 10 and, thus, the 1<sup>st</sup> Respondent is found to have not committed any irregularity as the short claims are found to have ben made based on verification of RR Register and M.T.Rating Division’s report. Therefore, invoking Clause 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the



State of Karnataka by the 1<sup>st</sup> Respondent is found to be in order. Therefore, contention of the appellant that the issue should have been dealt under Clause 27.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka is without any basis and, hence, rejected.

20. The Second Issue is whether the 1<sup>st</sup> Respondent has given opportunity to the Appellant to file objections before passing the final assessment order. From the available records, the 1<sup>st</sup> Respondent appears to have issued 30 days' notice to the Appellant Association dated 17.04.2013 and the Appellant Association is found to have filed its objection pursuant to the notice dated 06.04.2013 and, hence, the arguments of the Appellant that procedure laid down under Clause 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka is not followed while making supplementary claims cannot be accepted.

21. The Authorised Representative of the Appellant has argued that one of the 2<sup>nd</sup> Respondent Members, though participated in the proceedings, has not attested his signature to the final order and, hence, the proceedings got vitiated. In the present case, it appears that the nominated Member along with other Members has heard the case initially and demitted the office before the final order was passed and this he is found to have done on account of completion of his tenure as CGRF Member and, subsequently, the remaining two Members who constituted the quorum seemed to have continued with the business and found to have passed the impugned order. Under Regulation 8.02 KERC (CGRF & Ombudsman Regulations), 2004 ***"The proceedings of the Forum shall be conducted by the Chairperson of the Forum in the presence of the members, the quorum being two"*** and, hence the remaining two members were entitled to proceed with the case and pass final order as they constituted quorum and therefore the arguments of the Appellant that the proceedings conducted by the CGRF in the

instant case are vitiated is devoid of merit and hence rejected. Therefore, the following order:

## **ORDER**

22. For the foregoing reasons, the appeal *is dismissed* and the orders passed by the 2<sup>nd</sup> Respondent vide No.CGRF/235/2013-14/04-06.2013/1159-65 dated 28.05.2014 is hereby upheld.



(B.R.Jayaramaraje Urs)  
Electricity Ombudsman

1. M/s.Anriya Dwellington Apartment Association, No.1, 1<sup>st</sup> Main, Lottegollahalli, Dollars Colony, RMV 2<sup>nd</sup> Stage, Bangalore-560094 (represented by its Authorised Representative, Sri. M.A.Delvi, Bangalore).
2. Chairperson, Consumer Grievance Redressal Forum, Bangalore Urban District, Basaveshwarnagar, Bangalore.
3. The Assistant Executive Engineer (Ele), O & M C-6 Sub Division, BESCOM, Mathikere, Bangalore-560054.
4. Shri Vinayaka, Law Officer, BESCOM Headquarters, K.R.Circle, Bangalore-560001.
5. Managing Directors of ESCOMs.
6. PS to Hon. Chairman, KERC
7. PS to Hon.Member (A), KERC
8. PS to Hon.Member (M), KERC
9. PS to Secretary, KERC