



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-142/2013/188
Dated 24.04.2013

Shri B.S.Ashok Kumar,
 No.1143, 22nd Cross,
 Banashankari 2nd stage,
 BANGALORE-560070

**(Represented by Sri M.V.Kantharaja Setty,
 Authorised Representative)**

.. **Appellant**

Vs

1. The Asst. Executive Engineer(EI)
 S-1 Sub Division, BESCO,
 Jayanagar, Near Ganesha Temple,
 BANGALORE

**(Represented by Sri Vinayaka.K.
 Law Officer, BESCO)**

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 & Ombudsman) Regulations, 2004 against the order passed by

the Consumer Grievance Redressal Forum, BESCOM, Bangalore (hereinafter referred to as the 2nd Respondent) vide No CGRF/182/2012/2216-21 dated 27.12.2012 in respect of the Appellant's grievance relating to the short claims made by the Assistant Executive Engineer, S-1 Sub Division, BESCOM, Jayanagar, Bangalore (hereinafter referred to as the 1st Respondent) for Rs.1,62,688/- and also refusal of the 2nd Respondent to grant any relief against such short claims. Aggrieved by the impugned order passed by the 2nd Respondent, the Appellant has submitted his case as under:

2. The Appellant, Shri B.S.Ashok Kumar is the owner of property bearing No. 270 (Old) No.34 (New) situated at 10th Main Road Jayanagar 2nd Block, Bangalore. It was a residential building and a small portion of the building was used for cold storage purposes. The installation bearing R.R.No.1SP 5431 was serviced on 30.04.2002 for a load of 9 kW under L.T-5 category. At this period of time, there were two meters in operation in the premises: (a) one meter was connected to Cold Storage Unit i.e. 1SP 5431 and (b) another to general purposes i.e. 1S 6586. The tenant was paying the energy bill regularly.

3. The Appellant filed a suit against M/s.Classic Automotives for delivery of the vacant possession in the Civil Court. The Civil Court, based on the compromise petition filed by the parties, issued a compromise decree. As per the compromise decree, the tenant vacated the premises in April, 2010 and handed over possession of the vacant site to the Appellant.

4. Afterwards, the Appellant applied for sanction of temporary power supply with the 1st Respondent for construction of a commercial building on the vacant site. Before sanction of temporary power supply, the 1st Respondent made a short claim for Rs.1,62,688/- for the period from May 2009 to April 2010 on the ground that the stolen meter had not functioned properly and, hence, the

Appellant was liable to pay the energy bills on the basis of averages as the meter was showing NIL consumption.

5. After M/s.Classic Automotives vacated the open site, there was a theft of meter in May 2012. Then the Appellant lodged a complaint with the police regarding the theft of the meter. When M/s. Classic Automotives were using the premises, it drew power from General Purposes installation bearing R.R. No. 1S 6586 and BESCO would read the meter and would raise the bill. The Tenant was not using installation bearing No.1SP 5431. At no point of time, BESCO raised any objection when the other meter was showing NIL consumption.

6. BESCO has made short claims in respect of installation bearing RR No.1SP 5431 after a period of 2¹/₂ years, that too, when the Appellant approached for temporary power supply. This claim is time-barred as per Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and, hence, prayed this Authority to set aside the order passed by the 2nd Respondent and also disallow the short claims made by the 1st Respondent.

7. The 1st Respondent's comments were called vide letter No OMB/B/G-142/2013 dated 11.01.2013 and the 1st Respondent has furnished his comments vide letter No AEEE/S1/AAO/SA/3512 dated 22.01.2013.

8. In his comments, the 1st Respondent submitted that the Appellant demolished the building in May 2009 but did not surrender the installation to BESCO. The Junior Engineer, S-1 Sub Division, inspected the installation on 22.12.2011 and gave a report that the installation had been under disconnection and meter reading as on 22.12.2011 stood at 38735 units.

9. In May 2012, the Appellant gave a letter surrendering the installation. On this letter, the Assistant Executive Engineer(EI) called for a report from the Junior

Engineer(EI). The Junior Engineer(EI) conducted inspection of the installation and found that the meter had been missing in the premises and, accordingly, gave a report to the Assistant Executive Engineer(EI). Based on the Junior Engineer's report, the Assistant Executive Engineer(EI) raised back billing charges for a period of 2 years and, later, on the basis of Civil Court Order, the back billing charges had been reduced to 1 year and the amount was also reduced from Rs.3,15,817/- to Rs.1,62,688/-. Further, the Inspection report of the Junior Engineer submitted in May 2012 revealed missing of the meter. On account of non-availability of the meter, consumption could not be ascertained for the disputed period and, hence, based on average consumption and also based on Court Order, short claim had been made for 12 months for Rs.1,62,688/-.

10. The 1st Respondent added that it was the responsibility of the Appellant to safeguard and protect the meter from theft and damages, but in the present case, the Appellant had utterly failed to protect the meter. In the instant case, the Appellant had committed serious irregularities by not informing BESCO regarding the demolition of the building. Non-intimation is the root-cause for all the complications. This shows that the Appellant had not approached this Authority with clean hands as he had violated regulations by demolishing the building without the permission and also not surrendering the meter after demolition. Hence, the back billing charges raised against the Appellant was justified and prayed for confirmation of the order passed by the 2nd Respondent.

11 The case was taken up for hearing on 25.02.2013. On behalf of the Appellant, his Authorised Representative, Shri Bipin appeared and advanced his arguments and, on behalf of the 1st Respondent, Shri Vinayaka.K, Law Officer, BESCO appeared and put forth his arguments. The arguments got concluded on 18.04.2013.

12. During arguments, both the Authorised Representative and the Law Officer, BESCOM reiterated their earlier stand.

13. Both parties were informed vide letter No.OMB/B/G-142/2013/155 dated 04.02.2013 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.

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

a) Whether the 1st Respondent is right in claiming energy charges for a period of 12 months in the case of meter not recording?

b) Whether the 1st Respondent is justified in claiming energy bill for a period of 12 months based on the Civil Court order when the Court has not dealt with the electricity dispute but dealt with the suit for eviction of the tenant from the premises?

15) In order to answer the 1st question, we will have to refer to the letter dated 17.10.12 vide No AEE/S1/AAO/2238 addressed to the Appellant by the 1st Respondent. The relevant extracts of the letter is reproduced below:

16) "You are aware that you have applied for surrender of installation bearing RR No. 1SP 5431. At the time of applying for surrender, you have also stated that the meter in the spot was stolen by someone and you have enclosed xerox copy of the complaint given to the police station"

17) "However, as per the consumption pattern, it is noticed that there is no recorded consumption for the period between 4/2009 to 4/2011. But we have claimed average consumption charges only for the period from 5/09 to 4/10 for Rs.1,62,688/- as per Court order produced by you."

18) Another letter issued by the 1st Respondent to the Appellant dated 29.09.2012 vide No. AEE/S1/AAO/2051 reiterates once again that their claim is one of meter not recording and the letter reads **"There is no consumption recorded from 5/09 to 4/11 (4/11 being the date of disconnection). Since there is no documents to confirm either the meter is in good condition or there is no power supply, we have to claim average consumption charges for not recorded period. But you have produced Court order and according to Hon'ble Court order, the tenant has vacated the premises on 30.4.2010. Average consumption charges to be claimed only up to 30.4.2010, accordingly short claim for not recorded period from 5/2009 to 4/2010 (i.e.for 12 months is calculated as 1,62,688)."**

19) The above extracts clearly show that the 1st Respondent has treated the Appellant's case as one of meter not recording for the period between 5/2009 to 4/2010, and yet not applying Clause 27.04 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and back billing for 12 months. If meter not recording is the case of the 1st Respondent, then the course open to the 1st Respondent was to follow Clause 27.04 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and limit the back billing for a period for 6 months. Instead, the 1st Respondent appears to have relied on the Civil Court Order which has not dealt with the electricity dispute but with the suit filed for delivery of vacant site.

20) Though the 1st Respondent has admitted through his letters that the case is one of meter not recording, but still making a claim for 12 months will be violative of Clause 27.04 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Clause 27.04 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka restricts the Licensee's claims to 6 months preceding the date of inspection on the basis of the average energy consumption of the immediately preceding 3 billing months when the meter was recording properly in addition to demand/fixed charges. Hence, the following order:

ORDER

21) For the foregoing reasons, the claim made by the 1st Respondent against the Appellant **for Rs.1,62,688/- is disallowed**. However, the 1st Respondent is at liberty to revise its claim to 6 months as per Clause 27.04 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and recover such amount from the Appellant. In the result, the appeal partly succeeds.



(B.R.Jayaramaraje Urs)
Electricity Ombudsman

1. Shri B.S.Ashok Kumar, No.1143, 22nd Cross, Banashankari 2nd Stage, Bangalore-560070
(represented by his Authorised Representative, Shri M.V.Kantharaja Setty).
2. The Chairperson, Consumer Grievance Redressal Forum, BESCO Corporate Office, K.R.Circle, Bangalore
- 3.The Assistant Executive Engineer (Ele), S-1 Sub Division, BESCO, Jayanagar, Near Vinayaka Temple, Bangalore.

4. Shri Vinayaka.K., Law Officer, BESCO Corporate Office, K.R.Circle, Bangalore-560001.

5. Managing Directors of ESCOMs.

6. PS to Hon.Chairman, KERC

7. PS to Hon.Member (H), KERC

8. PS to Hon.Member (S), KERC

9. PS to Secretary, KERC