



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-199/2015/471

Dated 27.01.2015

M/s.Dell International Services (I) P.Ltd.,
Plot No.123, EPIP Phase II,
Whitefield Industrial Area,

BANGALORE-560066.

**(Represented by Sri Shridhar Prabhu,
Advocate - Authorised Representative)**

.. **Appellants**

Vs

1. The Asst. Executive Engineer(EI)

O & M E-4 Sub Division,

BESCOM,

Mahadevapura,

BANGALORE-560048

**(Represented by Shri Vinayaka.K,
Law Officer, BESCOM)**

2. Chairperson,

Consumer Grievance Redressal Forum

Office of the Superintending Engineer (EI),

BESCOM West Circle,

05, 3rd Stage,

Bhimajyothi HBCS Layout,

Next To Chord Road Hospital,

Basaveshwarnagar,

BANGALORE-560079**.. Respondents**

1. This is an appeal under Clause 22.02 of KERC (CGRF & Ombudsman) Regulations, 2004 against the order passed by the Consumer Grievance Redressal Forum, BESCO, Bangalore Urban District (here in after referred to as the 2nd Respondent) vide order No CGRF196/2012-13 dated 10.11.2014 with regard to the complaint made by the Appellant regarding back billing raised against the Appellant for Rs.3,77,97,015/- by BESCO on the grounds of misuse of electricity. The 2nd Respondent declined to interfere in the orders passed by the Assistant Executive Engineer (EI), E-4 Sub Division, BESCO, Mahadevapura, Bangalore-560048 (here in after referred to as the 1st Respondent). Aggrieved by the orders passed by the 2nd Respondent, the Appellant has submitted his case as under:

2. The Appellant, earlier known as Perot Systems TSI (India) Private Ltd changed to M/s. Dell International Services (India) Private Ltd., with effect from 21.10.2011, and the 1st Respondent was regularly visiting the installation and issuing bills as per the agreement and the Appellant paid the bills regularly. At no point of time, there had been any dispute. When matter stood at this, the Executive Engineer, M.T Rating Division inspected the installation on 13.05.2011 and observed that the Appellant was not in possession of IT/BT certificate but was availing industrial tariff which amounted to misuse of power and, hence, liable to be back billed for the period of misuse of power. Following the inspection, the 1st Respondent raised a back billing charges for Rs.3,77,97,015/- against the Appellant on the grounds of misuse. The Appellant challenged this demand before the 2nd Respondent and the 2nd Respondent, after hearing the matter, remanded the case to the 1st Respondent for fresh enquiry and order. Aggrieved by this order, the Appellant filed an appeal before this Authority and this Authority remanded the case to the 2nd Respondent for passing fresh order following the procedure. The 2nd Respondent, on remand, confirmed its earlier orders. Aggrieved by the orders passed by the 2nd Respondent, the Appellant has filed this appeal.

3. Further, this Authority remanded the case to the 2nd Respondent for fresh hearing and pass orders on merit. Case was remanded based on the admission made by the 1st Respondent during the hearing that the instant case did not fall under theft category under Section 126 of the Electricity Act, 2003. In spite of clear cut order issued by this Authority, the 2nd Respondent failed to assume jurisdiction and pass order on merit and instead passed order reconfirming its earlier order i.e., that it had no jurisdiction as the case fell under the category of misuse of power. This amounts to non-compliance of Ombudsman's orders.

4. The 1st Respondent's comments were called vide No OMB/B/G-199/2014/442 dated 24.11.2014 and he furnished his comments vide letter No AEE/E-4/AE(T).

5. In his comments, the 1st Respondent submitted that the 2nd Respondent had dismissed the complaint on the ground that the Appellant had effective and proper remedy under Clause 44 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Further, the M/s. Perot System (TSI) Private Ltd had been the Complainant before the 2nd Respondent vide order dated 10.11.2004, but the present appeal is filed by M/s. Dell International Service Private Ltd and not by M/s. Perot System(TSI) Private Limited and, therefore, this appeal is not maintainable and, hence, liable to be dismissed.

6. Further, the installation bearing R.R No E4HT 195 had been serviced on 9.10.2011 under HT-2(a) tariff in the name of M/s HCL Perot Systems Ltd. Subsequently, the installation had been transferred in the name of M/s Perot system TSI (India) Private Ltd in the year 2005 under HT2(a) tariff. During their routine inspection, MT Rating Division, observed the premises had been in occupation of M/s. Dell International services (I) Private Ltd and, hence, advised the 1st Respondent to insist on M/s Dell International Services (I) Private Limited to produce IT/BT certificate issued in their name by the IT/BT Department. Since the Appellant failed to produce IT/BT Certificate, the 1st Respondent had back billed for

Rs.3,77,97,015/- for misuse of power under Clause 42.02 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. This back billing had been challenged before the 2nd Respondent vide case No CGRF 78/2011-12 and the 2nd Respondent, after hearing the matter, passed an order remanding the case to the Assistant Executive Engineer (EI) to pass fresh order on merit following proper procedure. The Appellant, aggrieved by the 2nd Respondent's order, has filed this appeal.

7. The 2nd Respondent, in its order, had noted that the premises had been in occupation of M/s Dell International Services (India) Private Ltd and the said company had failed to produce the IT/BT Certificate issued in its name during MT Rating Division's inspection and further noted that as per Government Circular dated 10.01.2002 issued by IT/BT Department, it was mandatory on the part of the Appellant to obtain IT/BT certificate for availing industrial tariff. Thus, rightly the 2nd Respondent held that the case fell under Section 126 of the Electricity Act, 2003 and as such it had no jurisdiction to pass order in the matter.

8. Furthermore, power supply had been provided to M/s. Perot systems TSI (India) Private Ltd under HT-2(a) tariff (concessional tariff) based on the IT/BT certificate issued by the IT/BT Department but during inspection it had been found M/s. Dell International Services(India) Private Limited in occupation of the premises using concessional power under HT-2(a) tariff which amounted to misuse of power as M/s Dell international Services (India) Private Ltd failed to produce IT/BT certificate issued in their name by the IT/BT department and, hence, back billing charges had been justifiably raised against the Appellant. As this case pertained to misuse of power, the 2nd Respondent justifiably held that the case fell under Section 126 of the Electricity Act, 2003 and, hence, it had no jurisdiction to deal with such cases and the Appellant could approach the Appellant Authority under Clause 44 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka if he was aggrieved by the order passed by the 1st Respondent.

9. The case was taken up for hearing on 09.01.2015 and concluded on 20.1.2015. On behalf of the Appellant, Sri Shridhar Prabhu, advocate, put forth his arguments and, on behalf of the 1st Respondent, Sri Vinayaka.K, Law Officer, BESCOM, advanced his arguments.

10. The Advocate for the Appellant argued that the 2nd Respondent has not passed order on merits but instead passed order on maintainability of the complaint which runs contrary to the Ombudsman's order.

11. Secondly, the Appellant was initially billed under HT-2(a) tariff and later the Appellant furnished IT/BT certificate in support of its claim. The 1st Respondent ought to have seen the purpose of the use which is the heart of tariff and should have looked into activities carried out in the premises. Hence, prayed this authority to issue directions to the 2nd Respondent to reconsider the case on merits.

12. The Counsel for the 1st Respondent argued that the installation bearing R.R No E4-HT.195 has been serviced on 09.01.2001 under HT-2(a) tariff in the name of M/S HCL Perot System Limited. Subsequently, in the year 2005, the installation has been transferred in the name of Perot System TSI (India) Private Ltd under HT-2(a) tariff. The Company produced the IT/BT certificate issued in its name and ran the unit without any disturbance.

13. When such being the case, on 13.05.2011, the MT Rating Division conducted an inspection of the Appellant's installation and noticed that the premises was in occupation of M/s. Dell international Services India Private Limited and, hence, advised the 1st Respondent to back bill the installation for misuse of power for the period of misuse.

14. The Counsel for the 1st Respondent added that as per Government order 2002, it is the responsibility of the Company which claims concessional power to produce IT/BT certificate. In I.T sector, software activities are bracketed under HT-

2(a) tariff category and BPO services under HT-2(b) category. So, BESCO, in order to know the category of activity, insists on the consumers to bring certificate from the IT/BT Department. Thus, the present case is clearly a case of misuse of tariff as earlier M/s. Perot system TSI (India) had been given power for software activities, whereas M/s. Dell International Services (India) Private Ltd used power for BPO Services.

15. Furthermore, the 2nd Respondent has applied its mind, given reasoning, and come to the conclusion that it is a case of misuse of tariff and, as such, it did not get jurisdiction to deal with the case. However, on appeal, this Authority remanded the case to the 2nd Respondent based on the ground that the earlier order passed by the 2nd Respondent was erroneous as it referred to Section 135 of the Electricity Act, 2003 and other relevant provisions but not coming to right conclusions regarding the nature of the offence committed by the Appellant. Besides, the reasons given by the 2nd Respondent for remand was not clear and, hence, held it was not a reasoned order.

16. Subsequently, when the case was remanded, the 2nd Respondent afforded opportunity to both parties (Conducted 6 hearings) and passed a speaking order on 10.11.2014. Before passing order, the 2nd Respondent, had appreciated the facts of the case and relevant documents produced by the parties and held that it is a case of misuse of power under Section 42.02 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and, hence, it did not get jurisdiction. Clause 2(g) of KERC (CGRF & Ombudsman) Regulations, 2004, defines what constitutes "Complaint" and says that grievance falling within the purview of any of the following provisions of the Act are excluded from the jurisdiction of the Forum:

- (1) Unauthorised use of electricity as provided under section 126 of the Act
- (2) Offences and penalties as provided under section 135 to 139 of the Act

(3) accident in the distribution, supply or use of electricity as provided under section 161 of the Act

17. Hence, the Counsel for the 1st Respondent prayed this Authority to confirm the order passed by the 2nd Respondent and to dismiss the appeal.

18. Both parties were informed vide letter No.OMB/B/G-199/2014/458 dated 23.12.2014 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.

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

a) Whether the 2nd Respondent's order is in line with the Ombudsman's directions or not?

b) Whether the instant case comes under Section 126(6)(b)(iv) of the Electricity Act, 2003 and whether the 2nd Respondent's impugned order is consistent with the law?

19. This Authority in its earlier order relating to this case vide No OMB/B/G-121/2011/123 at para 17 at page had observed that the 2nd Respondent had failed to give reasons as to why it did not get jurisdiction to deal with the complaint and if it was of the opinion that that case fell under Section 126 of the Electricity Act, 2003, why it entertained the complaint and passed order on merit instead of dismissing the complaint for reason of non-maintainability and further why it remanded the case to the 1st Respondent for passing fresh order instead of advising the Appellant to approach the Appellate Authority under Clause 44 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. This

Authority also noted that the 2nd Respondent in its order had failed to mention the nature of offence committed by the Appellant under Section 126 of the Electricity Act, 2003 but had come to the conclusion that it did not get jurisdiction. With the above observations, the case was remanded to the 2nd Respondent to pass a reasoned and speaking order.

20. Besides, this Authority in its order also observed that the 1st Respondent in its revised assessment orders had cited Clauses 3.04, 29.03 and 44.02 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka which were not applicable to the case on hand as Clause 3.04 dealt with the Re-classification of the Consumer, Clause 29.03 dealt with erroneous billing and Clause 44.02 dealt with depositing of amount if consumer preferred an appeal before the appellate authority under Clause 44 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

21. The above observations were made by this Authority to drive home a point that the 2nd Respondent and the 1st Respondent had not applied their mind before passing order. However, the 2nd Respondent in its impugned order appears to have assumed jurisdiction, heard the matter and passed considered order which is found to be in line with the directions issued by this authority. The 2nd Respondent has rightly come to the conclusion that the instant case falls under Section 126 of the Electricity Act, 2003 i.e misuse of power and, hence, it did not get jurisdiction under clause 2(g) of KERC (CGRF& Ombudsman) Regulations, 2004.

22. The second question is whether the present case comes under Section 126 of the Electricity Act, 2003 or not and whether the 2nd Respondent's order is in consistent with law?

It is clear from the records like mahazar and other documents that the Appellant who is in occupation of the premises was not in possession of IT/BT certificate issued in its name by the IT/BT Department during MT Rating Division's

inspection. It is further seen that earlier the premises had been in possession of M/s. Perot System Private Limited and subsequently M/s Dell International Services Private Limited stepped into the shoes of M/s Perot System(p) Limited but failed to produce IT/BT certificate issued in its name by the IT/BT Department.

23. The Appellant maintained that Perot System Corporation was earlier the holding company of M/s. Perot System TSI (India) private Limited and, subsequently, the holding company was taken over by M/s. Dell International Services (P) Limited on 03.11.2009 and hence "Dell Service" came to be displayed as the holding Company of Perot System TSI (India) private limited and the legal name continued to be Perot systems TSI (India) Private Limited and, therefore, there is no need for the Appellant to produce fresh certificate issued from the IT/BT Department. This argument doesn't hold water because Government Circular vide No ITD 06 PRM 2001 says that any Company intending to use concessional power has to produce IT/BT certificate issued in its name to the Licensee and in the present case the Appellant failed to produce IT/BT certificate and further the Appellant had earlier entered into agreement with the Licensee in the name of M/s Perot system (p) Limited and when there is a change in the name of the Company it is the responsibility of the Appellant to produce IT/BT certificate in the name of the new company or otherwise the existing supply agreement entered into by the parties becomes infructuous, invalid and inoperable. In the instant case, it is found that the Appellant Company has failed to bring to the notice of the Licensee regarding change of name of the Company nor entered into fresh agreement. The Counsel for the 1st Respondent submitted that the earlier M/s. Perot System (P) Limited was using the premises for running IT activities (Software) and subsequently M/s. Dell International Services Limited used the premises for running BPO services .This has created doubts in the mind of the Licensee that the Appellant has misused the tariff earlier assigned to M/s. Perot System(p) Ltd and, hence, raised back billing charges for the period of misuse under Section 126(6)(b)(iv) of the Electricity Act, 2003,i.e **"for the purpose other than for which the usage of electricity was authorised "**. The order passed by the 2nd Respondent is found to be in conformity

with the law and does not warrant interference by this Authority. In the light of the above, this authority concurs with the order passed by the 2nd Respondent that both CGRF and Ombudsman do not get jurisdiction to deal with the cases falling under "Misuse of power." Further holds that the appeal is not maintainable before this Authority. In the light of this, the arguments of the Appellant that this Authority and the 2nd Respondent get jurisdiction is rejected. Since the Appellant is aggrieved by the order passed by the 1st Respondent under Clause 42.07, it can file appeal under Clause 44 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka which states that ***"Any person aggrieved by a final order made under the Conditions 42.07 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as specified by the State Commission in KERC (Procedure for Filing Appeal before the Appellate Authority) Regulations, 2005 (Annex-3) under intimation to the office of issue."***

From the above, it is clear that the Appellant has clear legal remedy under Clause 44 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. In view of the availability of legal remedy under Clause 44, this appeal is hereby rejected as not maintainable.

24. In the light of the above discussion, the following orders are passed.

ORDER

25. For the foregoing reasons, the appeal **is dismissed**. The impugned order of the 2nd Respondent vide No CGRF/196/2012-13 **is upheld**.


(B.R. Jayaramaraje Urs)
Electricity Ombudsman

1. M/s. Dell International Services (I) Pvt.Ltd., Plot No.123, EPIP Phase II, Whitefield Industrial Area, Bangalore-560066 (represented by their Legal Counsel, Sri Shridhar Prabhu, Bangalore).
2. Chairperson, Consumer Grievance Redressal Forum, Bangalore Urban District, Basaveshwarnagar, Bangalore.
3. The Assistant Executive Engineer (Ele), O & M E-4 Sub Division, BESCO, Mahadevapura, Bangalore-560048
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