



BEFORE THE ELECTRICITY OMBUDSMAN

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

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

Case No.OMB/B/G-202/2014/476

Dated the 5th March 2015

Mrs Ellen John,
Wake Up India Campus,
Doddadunna Sandra
Kadugodi,
Bangalore-560067
(Party in person)

... Appellant

V/S

1) Assistant Executive Engineer(Ele)
Hosakote Sub-Division,Hosakote, BESCO

2)The Chairperson
CGRF, Office of the S.E(Ele)
BESCO ,East Circle, JP Avenue,
Curve Road, Tasker Town
Shivajinagar, Bangalore – 560 051
(Sri Kanta Reddy, AEE appeared in person)

... Respondents

This is an appeal under clause 21.02 of KERC(CGRF & Ombudsman) Regulations, 2004 against the order passed by the CGRF, BESCOM, Bangalore Rural District (hereinafter referred to as the 2nd Respondent) vide order CGRF/07/2014 dated 28.10.2014 in respect of appellant's complaint regarding back billing for Rs. 43,394/- in respect of Installation bearing R.R No HIP-10883 & Rs 3155/- in respect of Installation bearing RR No AEH-4167. Aggrieved by the order passed by the 2nd Respondent, the appellant submitted her case as under:

2. The appellant has three Electric installations at Doddadunnasandra, Hosakote Taluk, Bangalore Rural District:

- 1)AEH-3958-LT-2Tariff-5kW-dated-7.05.1999(Domestic)
- 2) AEH 4167-LT-2 Tariff- 3kW Dated 08.05.2000(Domestic)
- 3)HIP 10883-LT-4 (Irrigation)-5 HP Dated 28.02.1999 (IP set)

The appellant bought 1.20 acres of agricultural land in 1998 and out of this earmarked 0.10 acres of land for establishing a Charitable Trust. This charitable Trust runs a Counseling Centre for Alcoholics , Help Line for women and School for children (up to 4th standard) at Donnadunnasandra which comes under Hosakote Taluk. The appellant is growing Ragi and other plants in the remaining 1.10 Acres. Owing to frequent fluctuation in voltage, computers got burnt in the appellant's premises. So the appellant brought this to the knowledge of the A.E.E (Ele).

3. Following the complaint, the AEE (Ele) Hosakote Sub-Division inspected the installation of the appellant on 26.06.2014 and after inspection sent a notice advising the appellant to pay Rs 1.05 Lakhs for misusing power. Further,

when the AEE (Ele) tried to disconnect power supply to her installations, the appellant approached General Manager (BESCOM) seeking intervention in the matter and also to advise the AEE(Ele) not to disconnect power supply to her installation. The appellant, on the advice of the G.M paid the appeal deposit of Rs 53,543/-. The General Manager after hearing the appellant, passed orders directing the AEE(Ele) to restrict the back billing to 1350 units in respect of RR No HIP 10883 and to collect interest on the back bill from the date such back bill became due. As regards RR No AEH 4167, the General Manager upheld the assessment order passed by the AEE (Ele) and directed the AEE(EI) to collect interest on the amount from the date such amount became due. As regards installation bearing RR No AEH 3958, GM directed AEE (Ele) to withdraw the back billing charges raised against the appellant.

4. The appellant challenged the decision of General Manager, BESCOM, before the Hon'ble High court. The Hon'ble High court, after hearing the matter, passed orders directing BESCOM to collect the dues from the appellant in 4 installments in respect of AEH 3958 and in respect of other installations, advised the appellant to approach the assessing authority for adjudication. BESCOM did not adjust the appeal deposit paid by the appellant against her dues. However, the appellant paid Rs. 18,000/- against the total demand of Rs. 24,000/-. In spite of this, BESCOM disconnected power supply to installation bearing NO AEH 3958/- for nonpayment of balance of Rs. 6000/-.

5. The Assessing Authority, complying with the Hon'ble High Court order, heard the matter and passed orders directing the appellant to pay the dues in 4 installments in respect of installation bearing RR No. AEH 3958 as per the High

Court order and further the appellant shall pay the dues as directed by the appellate authority in respect RR No. 4167. In respect of installation 10883 the AEE (Ele) directed that 50% of the recorded consumption shall be billed under LT-2(b) tariff schedule and the remaining 50% consumption shall be billed under LT-4(a) tariff schedule (IP set).

6. Aggrieved by the assessment orders passed by the AEE (Ele), the appellant filed a complaint before the CGRF. The CGRF, after hearing the matter, passed orders directing the appellant to pay Rs. 43,394/- in respect of HIP 10883 and Rs. 3155/- in respect installation bearing R.R No AEH 4167 and also pay the back billing charges raised on the basis of the vigilance report. Lastly, advised the appellant to pay the applicable Electricity Tax, interest and Fixed Charges in respect of the installations. Furthermore, BESCO has showed arrears of Rs. 43,394/- against RR NO HIP-10883, even though there is no irrigation pump set in the place and no electricity drawn.

7. In respect of installation bearing R.R No AEH 4167, BESCO has levied a penalty of Rs. 3155/- on the grounds of misuse of tariff i.e from LT-2(a) tariff schedule (Domestic) to LT- 2 (b) tariff schedule (School) even though the appellant was not running any school and hence levy of penalty is illegal and therefore the appellant is not liable to pay the amount. In respect of installation bearing R.R No 3958, BESCO has levied a penalty of Rs.4948/- on the grounds of misuse of power i.e from domestic purposes to running an office. KERC rules allow the consumer to use power for bonafide purposes for computer, tailoring and consultancy and hence such uses do not amount to misuse of power and therefore the appellant is not liable to pay the amount.

8. The 1st Respondent's comments were called vide this office letter No OMB/B/G-202/2014/452 dated 10.12.2014.

9. The 1st Respondent in his statement of objections tracing the history of the case submitted that the appellant was liable to pay the dues as per the orders of the appellate authority and the orders of the CGRF and hence prayed this authority to confirm the orders passed by the CGRF and dismiss the appeal.

10. The case was taken up for hearing on 13.12.2015 and concluded on 24.02.2015. The appellant, Smt Ellen John personally appeared and put forth her arguments and Shri Kanta Reddy, the 1st Respondent appeared and advanced his arguments.

11. During the time of hearing, both the appellant and the 1st Respondent reiterated the submissions made in the appeal memo and the statement of objections respectively.

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

1) Whether the appellant is running a school for charity and if so, whether BESCO is right in billing the school run by a charitable institution under LT-2(b) tariff schedule?

2) Whether the appellant has misused power sanctioned under LT-2(a) tariff schedule for some other purposes as alleged by BESCO?

3) Whether misuse of power by the appellant is proved beyond doubt?

4) Whether back billing is justified?

13. In order to answer the first question, we will have to see whether the school run by the appellant is a charity school. The appellant has produced a photo copy of the registered trust deed which evidences the school as run by a Charitable Trust. KERC tariff order categorized schools run by the charitable institution under LT-2(a) tariff schedule and hence it is clear that the appellant has not misused LT-2(a) tariff as alleged by the 1st Respondent. In fact, the AEE (EI) admitted during the hearing that the school run by the appellant is a charity institution and entitled to be billed under LT-2(a) tariff. It is inexplicable how the 1st Respondent has charged the appellant of misusing power inspite of appellant producing documentary proof that the school is run by a Trust registered under the Charitable Trust Act.

14. The second question relates to drawl of power from installation 10883 for computer and for running office which was sanctioned for irrigation pump set. In respect of this installation, the 1st Respondent has ordered that 50% of the recorded consumption shall be billed under LT-2(b) tariff schedule and the remaining consumption under LT-4(a) tariff schedule. The tariff orders are very clear that power supplied to farmers for IP sets up to 10HP is not chargeable and in other words power to IP sets below 10HP is free. In the instant case, it is not clear whether the office and computer formed part of appellant's agricultural establishment but there are no records to show that the appellant has used power sanctioned for IP set for commercial purposes and hence in the

absence any cogent evidence, it is difficult to believe that the appellant has misused free power for commercial purposes and hence it should be deemed that such power is used for bonafide agricultural purposes. The 1st Respondent has made a peculiar allegation against the appellant that she has misused power supplied to run IP set to draw drinking water and supply to the children studying in Trust School. Even if it is true, the quantum of water drawn for drinking purpose might not exceed few litres and hence this should not have been the cause for BESCO to raise back bill against the appellant. The allegation appears to be trivial and absurd and does not amount to misuse of power. Therefore the back billing raised against the appellant deserves to be set aside for want of sufficient evidence. Hence, the assessment order that 50% of the recorded consumption should be billed under LT-2(b) is without any basis and hence deserved to be set aside.

15. In the circumstances discussed above, the following order is passed:

ORDER

For the foregoing reasons, the impugned orders passed by CGRF, Bangalore Rural District is set aside. The 1st Respondent's assessment orders demanding Rs. 3155/- in respect of RR No.4167 and Rs. 43394/- in respect of R.R No. 10843 are hereby set aside. In the result the appeal succeeds.



(B.R.Jayaramaraje Urs)
Electricity Ombudsman

1. Mrs Ellen John, Wake Up India Campus, Doddadunna Sandra, Kadugodi, Bangalore-560067.
2. Assistant Executive Engineer (EI), O & M, BESCOM, Hosakote Sub-Division, Hosakote, Bangalore Rural District.
3. Consumers Grievances Redressal Forum, Office of the Superintending Engineer (Ele), East Circle, , BESCOM, East Circle, JP Avenue, Curve Road, Tasker Town, Shivajinagar, Bangalore – 560 051.
4. Managing Directors of all ESCOMs
5. PS to Hon'ble Chairman, KERC
6. PS to Hon'ble Member (A), KERC
7. PS to Hon'ble Member (M), KERC
8. PS to Secretary, KERC.
