



BEFORE THE ELECTRICITY OMBUDSMAN

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

Present: B.R.Jayaramarajeurs, IAS (Retd)
Electricity Ombudsman

Case No.OMB/B/G-198/2014

Dated the 25th March 2015

M/s Gopalan Enterprises
private Limited, Uttari, Kaggalipura,
Bangalore-560062

... Appellant

(Represented by Sri M.A.Delvi, Advocate)

V/S

1) The Assistant Executive Engineer(EI)
K-3,Sub-Division,Bescom,Kaggalipura
Bangalore

(Represented by Sri Vinayaka.K, Law Officer)

2) The Chairperson,
Consumer Grievance Redressal Forum
(CGRF),Office of the Superintending Engineer,
BESCOM, West Circle,
05 ,3rd Stage, Bhimajyothi HBCS Layout
Next to Chord Road Hospital

Basaveshwaranagar
Bangalore-560079

... Respondents

1. This is an appeal under clause 21.02 of KERC (CGRF & Ombudsman) Regulations, 2004 against the order passed by CGRF, BESCO, Bangalore urban District, Bangalore (here in after referred to as the 2nd Respondent) vide order No CGRF/Chairman/WC/4248-53 dated 10th November, 2014 in respect of BESCO's short claims against the appellant for Rs. 40,97,824/- on the grounds of misuse of power. CGRF has declined to interfere in the orders passed by the AEE(EI). Aggrieved by the order passed by the CGRF, the appellant has submitted his case as under:

2. The appellant owns 110 acres of land at Uttari, Kaggalipura. In this 110 acres, the appellant is using 10 acres for green house and the remaining extent for agricultural purposes. The appellant has taken power supply from BESCO for the maintenance of green house and for cultivating dry lands. The Electrical Installation is assigned RR No. HT-57. It stands in the name of the appellant. The installation was serviced on 06.04.2004 with a sanctioned load of 50 KVA. Since the subject installation is an HT installation, the meter was regularly read by the jurisdictional AEE(EI). The installation between 06.04.2004 to 01.06.2014 was periodically inspected and calibrated and the date of inspections are as follows:

a) 23.06.2009

b) 04.06.2010

c) 08.02.2011

d) 26.11.2011

e) 19.03.2012

MT Rating Division during their routine inspection, noted that the installation is a farm land and a horticultural farm. During the same period, the sub -Division which visited the installation and took meter reading did not make any remarks on the usage of water. The AEE(EI) O & M Sub-Division visited the farm on 1.06.2012 observed that out of 110 acres of land, only 10 acres were being used for green house purposes and remaining land was being used for growing vegetables and other crops. After this inspection, the 1st Respondent issued a demand notice dated 13.06.2012 stating that the appellant had misused HT-3(b) tariff schedule for Green house purpose which comes under HT- 2(a) tariff schedule and hence the appellant was liable to pay the difference of HT 2(a) -HT 3(b) tariff which was calculated at Rs. 40,97,824/-. The short claims were made for the period between 02.04.2004 to 01.05.2012. The appellant's objections were not considered and there was also a threat of disconnection. Hence, the appellant approached the Chief Engineer(EI) seeking intervention in the matter. Chief Engineer(EI) did intervene in the matter and wrote to Superintending Engineer (Ele) dated 11.03.2014 to inspect the installation along with the Executive Engineer(EI) Kengeri Division & Accounts Officer (Internal Audit) Kengeri Division and to furnish the following information.

- 1) Date of intimation of power supply with tariff applicable
- 2) Date of service of installation and tariff applied
- 3) Date of last payment with receipt No & date
- 4) Installation status
- 5) Nature of activity running in the premises.

3. Chief Engineer's intervention did not yield any result and there was also a threat of disconnection and hence the appellant was forced to approach CGRF. The CGRF, after hearing the parties, passed an order dismissing the complaint on the grounds of non-maintainability. In the mean while, the appellant sought for sanction of additional load of 75 KVA power. Although all the formalities had been completed in 2005, the service was effectively given on 01.09.2009. However, the AEE(EI) took a stand that it took some time to complete the formalities and hence the installation had been virtually additionally serviced from the year 2005 and hence bill had to be revised from 2005. This stand of the AEE(EI) is opposed to clause 04.08 of COS which defines what constitutes an effective servicing of installation. As per this clause, before servicing any additional load, pre-commissioning test has to be conducted by the MT Rating Division and this test has to be approved by the Electrical Inspectorate. In the instant case, these requirements are not met and the AEE(EI) has failed to produce RR docket to prove that the installation was additionally serviced on the date assumed by him. Hence this authority has to consider the following:

a) The installation was serviced under HT-3(b) tariff schedule as a farm land and from the date of service till 19.03.2012 there is no material on record to show that there was any misuse of electricity for greenhouse purposes and hence the appellant is not liable to pay difference of HT-2(a) and HT-3(b) tariff.

b) The notice dated 13.06.2012 does not speak of termination of agreement nor the appellant was asked to enter into fresh agreement. Thus, the AEE(EI) has violated Regulation 3.04 of Conditions of Supply of Distribution licensees in the state of Karnataka.

c) Further, clause 03.04 of Conditions of supply of Distribution licensee in the state of Karnataka has a prospective applicability from the date the Licensee noticed the misclassification and hence the 1st Respondent cannot back bill the appellant.

d) The License should confine HT-2(a) billing to greenhouse portion and the remaining portion under HT-3(b) tariff schedule. But, the Licensee has classified the energy used for farming also under HT-2(a) tariff and based on this premise claimed difference of HT-2(a)-HT-3(b) for the entire of 110.00 acres for a period of 8 years i.e. 2004 to 2012.

e) The appellant is carrying out agricultural activities in his field and hence claiming difference of HT-2(a)-HT3(b) for a period of 8 years on the grounds of misuse is incorrect.

f) Farming comes under HT -3(b) tariff schedule and Green House comes under HT-2(a) tariff schedule (Industrial). The Green House was setup in 2011, but the Licensee has back billed Greenhouse from 2004 which is incorrect.

g) The installation was initially serviced for 50 KVA and appellant made a request for sanction of additional load to an extent of 75 KVA in the year 2005. This was sanctioned in 2005 but not serviced till 1.07.2009. However, the Licensee has treated 75 KVA power as sanctioned in 2004.

h) Licensee has levied fixed charges for 125 KVA from 2004, and claimed difference of HT-2(a)-HT-3(b) from 2004 up to 2012. Hence, the Licensee should restrict the claims for a period of one year only.

4. The 1st Respondent's comments were called vide this Office No OMB/B/G-198/2014/441 dated 24.11.2014.

5. In his comments, the 1st Respondent submitted that the appellant had been sanctioned 50 KVA power in 2004 and additional load of 75 KVA in 2005. The AEE(EI) O&M sub-Division inspected the

installation on 01.06.2011 and observed that the appellant had set up a green house in his land and had used power for greenhouse which was liable to be billed under HT-2(a) tariff schedule but had been wrongly billed under HT-3(b) tariff schedule and hence the appellant was liable to pay the difference of HT-2(a) and HT-3(b) tariff which came to Rs. 40,97,824/-.

6. The 1st respondent added that the appellant's installation had been additionally serviced for 75 KVA in 2005 and the senior official of the appellant company who had been present during inspection informed that the green house had been in existence for the previous 6 years and based on this information differential had been worked out and back billing had been done as per the regulation and therefore appeal liable to be dismissed.

7. The case was taken up for hearing on 23.01.2015 and concluded on 18.03.2015. On behalf of the appellant, Shri Delvi, the Authorised representative appeared and advanced his arguments. On behalf of the 1st Respondent, Shri Vinayaka, Law Officer, BESCO appeared and put forth his arguments. Arguments from both sides got concluded on 18.03.2015.

8. During the hearing, the appellant filed a memo which claims the AEE (EI) having written a letter to the appellant admitting additional power serviced in the year 2009. Further, the memo claims CE (EI) having formed a team of officers to look into the grievance of the

appellant and that Committee having submitted a report confirming additional servicing of the installation in 2009 based on the AEE (EI)'s letter dated 19.07.2012 issued to the appellant and hence short claims to be made under HT-2(a) tariff from the date of additional power serviced i.e. 01.07.2009 for 125 KVA. In view of this, the authorised representative of the appellant prayed this Authority to pass suitable order in the matter.

9. The counsel for the 1st respondent also filed a memo which signifies CE (EI) having issued direction to the team of officers headed by the Superintending Engineer to inspect the installation and to submit report on certain matters and based on the directions, the team having inspected the installation and submitted a report confirming additional power serviced in the year 2009 based on the letter issued by the AEE (EI) OM Sub-Division to the appellant dated 19.07.2012 vide No.ಸಕಾನಿ ಎಂ (ಐ) : ದ 12: ವ್ಯ 11363. Further, the memo also mentions joint inspection carried out by BESCO in the presence of the consumer dated 23.02.2015 which disclosed 70% of the land covered under covered cultivation and 30% of the land covered under open cultivation.

10. Above independent memos are found to have placed reliance on AEE 's (EI) letter dated 19.07.2012 issued to the appellant admitting 01.07.2009 as the date of additional power serviced i.e. 75 KVA. Further, both parties in their respective memos appear to have relied on a report submitted by a Team of officers formed by the CE (EI) to


look into the grievances of the appellant which favoured acceptance of AEE (EI) letter dated 19.07.2012 which admitted 01.07.2009 as the date of additional power serviced i.e. 75 KVA.

11. Based on the memos filed by the parties, the following order is passed.

ORDER

- (a) The 1st respondent to count 01.07.2009 as the date of additional power serviced i.e. 75 KVA.
- (b) 1st respondent to reckon 125 KVA as the total power supplied to the appellant from 01.07.2009 and bill 70% of the power consumed under HT-2(a) tariff schedule (under covered cultivation) and the remaining power consumed under HT-3(b) (under open cultivation) from 01.07.2009.
- (c) The 1st respondent to withdraw the short claim preferred for the period prior to 01.07.2009.

In the result the appeal partly succeeds.


(B.R Jayaramaraje Urs)
Electricity Ombudsman

1. M/s Gopalan Enterprises private Limited, Uttari, Kaggalipura, Bangalore-560062, (Represented by Sri M.A.Delvi, Advocate)
2. The Assistant Executive Engineer(EI), K-3, Sub-Division, BESCO, Kaggalipura, Bangalore, (By Sri Vinayaka.K, Law Officer)
3. The Chairperson, Consumer Grievance Redressal Forum, (CGRF), Office of the Superintending Engineer, BESCO, West Circle, 05 ,3rd Stage, Bhimajyothi HBCS Layout, Next to Chord Road Hospital, Basaveshwaranagar, Bangalore-560079
4. Managing Directors of 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
