



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-146/2013/316

Dated 16.12.2013

1. Smt.K.S.Shashikala,
#1 to 4, Kathilapalya Village,
Koramangala Layout,
BANGALORE

2. M/s.HCL EAI Services Limited,
(formerly known as M/s.Aalayance E-Commission
Services Private Limited)
#1 to 4, Kathilapalya Village, Koramangala Layout,
BANGALORE

**(Represented by M/s. Shridhar Prabhu Associates,
Advocates - Authorised Representatives)**

.. Appellants

Vs

1. The Asst. Executive Engineer(EI)
O & M S-4 Sub Division,
Koramangala,
BANGALORE
**(Represented by Shri Vinayaka ,
Law Officer, BESCO)**

The Chairperson
Consumer Grievance Redressal Forum

BESCOM,
BANGALORE

.. **Respondents**

1. This appeal under Clause 21.02 of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004 is directed against the order passed by the Consumer Grievance Redressal Forum (CGRF), BESCOM, Bangalore (hereinafter referred to as the 2nd respondent) vide No CGRF/153/2012/2298-2304 dated 11.2.2013 in respect of the Appellants' grievance relating to short claims raised by the Assistant Executive Engineer(EI), O & M S-4 Sub Division, BESCOM, Koramangala, Bangalore (hereinafter referred to as the 1st Respondent) for Rs.36,91,528/- for failing to produce fresh IT/BT Certificate issued by the Competent Authority when the Company's name was changed and also refusal of the 2nd respondent to interfere in the order passed by the 1st Respondent. The Appellants, aggrieved by the order passed by the 2nd Respondent, have submitted their case as under:

2. The 1st Appellant is an Electricity Consumer of BESCOM. The 1st Appellant is the owner of the premises having HT installation bearing R.R No S4HT-127. The installation was serviced on 18th February, 2000 to an extent of 250 KVA under HT-2(b) tariff. The 1st Appellant, initially, leased the premises to M/s Aalayance E-Commission Services (P) Ltd for running a software unit and the Lessee in order to avail HT-2(a) electricity tariff approached the Assistant Director, Directorate of Industries & Commerce and obtained tariff certificate and produced the tariff certificate to the Licensee and, based on this certificate, BESCOM extended HT-2(a) tariff to the Appellant (Lessee) with effect from 19.06.2002. Subsequently, M/s Aalayance E-Commission Services (P) Ltd applied for change of name with the Registrar of Companies, Government of India and the Registrar of Companies issued a fresh certificate of incorporation consequent to the change of name dated 23.03.2006. When things stood thus, suddenly on 14th December,2011, the 1st

Respondent issued a notice to the 1st Appellant to furnish IT/BT certificate in the name of the HCL EAI Services Ltd within 15 days, failing which she would be back billed from 1st April, 2006. Thereafter, the 1st Respondent issued a letter bearing No 4502-03 dated 23rd January, 2012 informing the 1st Appellant about the back billing charges payable by her amounting to Rs.36,91,528/- and to pay the amount within 30 days. Later, the 1st Respondent issued a formal order dated 11th April, 2012 to recover the short claim amount with interest and further instruction to disconnect the installation if payment was not made within 30days from the date of the said order.

3. Further, under the Karnataka Electricity (Taxation on consumption) Act, 1959, the Licensee cannot collect Electricity Taxes and only KPTCL is empowered to collect the Tax. Admittedly, the KPTCL cannot supply power to the complainants or, in fact, is not supplying power to any consumer since 1st June 2002. Since KPTCL is not a Licensee under the now repealed The Indian Electricity Act, 1910, it is not authorised to demand/ collect any tax under the provisions of the Act.

4. BESCO in innumerable cases has waived and withdrawn the back billing charges, reaffirming the applicability of HT-2(a) tariff to Software Development Companies. One such case relates to M/s Safina Towers Private Ltd and, in this case, BESCO, through its communication dated 27th March, 2008, has withdrawn the back billing charges.

5. Similarly, in the case of M/s. Talisma Corporation (P) Ltd, BESCO, in their letter vide No AGM/M/C2/AAO/SA1/643 dated 6th July,2011, has waived the back billing charges on production of IT/BT Certificate bearing No IT/Registration/268/2010-11 dated 14th February,2011 by the Company

6. The Hon'ble High Court of Karnataka, in case of M/s Hinduja Global Solutions (P) Limited & others Vs K.E.R.C & others in WP No 35620-35621/2010, has clearly held that BESCO is bound to honour the correct tariff to IT Companies.

7. The 1st Respondent has raised back billing charges following the Government of Karnataka order. The Government Circular dated 10th January, 2002 produced by the 1st Respondent is not published in the official gazette nor brought to the notice of the consumers and, hence, it cannot be taken notice of.

8. In view of the above, the Advocates for the Appellants prayed this Authority to set aside the impugned order of the 2nd Respondent and to direct the 1st Respondent to refund the excess amount wrongly collected from the Appellants by applying wrong tariff schedules along with interest.

9. The 1st Respondent's comments were called vide this office letter No. OMB/B/G-146/2013/179 dated 21.03.2013.

10. The 1st Respondent in his statement of objections vide letter AEE(E)/S4/AAO/SA/12-13/ 92 dated 08.04.2013 submitted that the 1st Appellant is the owner of the subject premises and the installation was serviced in the name of the 1st Appellant on 18.02.2000. The owner of the premises leased the premises to M/s Aalayance E-commission Services (P) Ltd in December 2001. The lessee registered its name with the Directorate of Industries & Commerce on 04.05.2002 and also obtained the tariff concessional certificate from the same Directorate on the same day. After obtaining the tariff certificate, the Lessee applied for concession along with the concession certificate and the proposal was processed at various levels in BESCO and in August 2002 change of tariff was effected (HT-(2a). During the Internal Audit of the subject HT installation, the Accounts Officer observed that the firm had its name changed to HCL EAI Services Ltd with effect from 23.03.2006 as per fresh certificate of incorporation and, consequent on change of name, the Company had to be billed under HT-2(b) from 01.10.2006 and differential tariff had

to be collected through back billing which amounted to Rs.36,91,528/- from 01.04,2006 to 01.10.2011. Based on Internal Audit's observation, the Lessee was called upon to produce IT/BT certificate in the name of HCL EAI Services Ltd on 23.03.2006 and there was no reply from the Company and, hence, short claim notice for Rs.36.91,528/- was issued and the Company sought instalments for payments of this amount. Finally, speaking order was passed on 11.04.2012 directing the Company to pay the amount. Against this Order, the Company & the owner of the premises filed a complaint before the 2nd Respondent which, after hearing, dismissed and now filed an appeal before the Electricity Ombudsman. In the light of the above, the 1st Respondent prayed this Authority to dismiss the appeal and to confirm the order passed by the 2nd Respondent.

11. The case was taken up for hearing on 18.11.2013 .On behalf of the Appellants, Advocate Shri Manjunath Rao appeared and argued the case. On behalf of the 1st Respondent, Shri Vinayaka, Law Officer, BESCOM appeared and submitted his arguments. Final hearing was conducted on 21.11.2013 and, on that day, Shri Manjunatha Rao filed his written arguments.

12. The Advocate for the Appellants reiterated the submissions made in their appeal memo.

13. The Law Officer, BESCOM, arguing on the competence of KPTCL to collect Electricity Tax, submitted that the validity of the KET Act had been challenged before the Hon'ble High Court of Karnataka and the same had been validated by the Hon'ble High Court and the averments made by the Advocate for the Appellants were factually incorrect and, hence, such averments were unacceptable and deserved to be dismissed.

14. The Law Officer, BESCOM denied BESCOM having withdrawn claims made against M/s Safina Towers (P) Ltd and submitted that the Appellants were factually

wrong and not supported by any evidence and, hence, such assertions are not worthy of consideration.

15. Rejecting the pleas of the Appellants that contempt case in regard to M/s Hinduja Global Solutions (P) Ltd., is still pending, the Law officer, BESCOB submitted that BESCOB filed a Writ Appeal and the Division Bench of the Hon'ble High Court had stayed the Single Judge's order and even the contempt proceedings initiated against the then Managing Director, BESCOB had been dropped.

16. Rebutting the claims of the Appellants that BESCOB had extended concessions illegally to M/S Talisma Corporation (P) Ltd, the Law Officer, BESCOB submitted that an enquiry had been instituted in the matter and action as per law would be taken on the outcome of the enquiry.

17. The Law officer, BESCOB added that whenever the Company's name is changed, both BESCOB & the Consumer have to take legal steps to bring the changes on record by entering into a fresh agreement and, for this, the Complainants should approach IT/BT Department and get a tariff certificate in the name of M/s HCL EAI Services Ltd. However, in the instant case, the Appellant failed to bring fresh tariff certificate from the concerned Authority and, hence, short claims were justified.

18. Both parties were informed vide letter No.OMB/B/G-146/2013/306 dated 29.10.2013 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.

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

a) Whether the Licensee is justified in back billing the Appellants for non production of IT/BT certificate from the date of change of Company's name in 2006?

b) Whether the Appellant Company kept the Distribution Company in dark regarding the change of the Company's name?

c) Should not the Appellants enter into fresh agreement with the Licensee after the change of name of the Company?

d) Whether the Licensee is right in insisting on the Appellants to bring fresh certificate from the IT/BT Department after the change of name of the Company?

20. In order to answer the first question, we will have to see whether the Appellant Company, after the change of name, has notified the change to the licensee? From the records, it can be seen that, though the company changed its name in the year 2006, it never brought this change to the notice of the Licensee. The Licensee came to know of the change of Company's name in the year 2011 when Internal Audit wing conducted inspection of the subject installation. Earlier, the 2nd Appellant was running the Company in the name of M/s.Aalyance E.Commission Services Private Ltd., and it appears that the Company changed its name in the year in 2006 and, after the change of name of the company, the Appellants should have notified the changes to BESCO and should have entered into fresh agreement in the name of HCL EAI Services Ltd. This exercise appears to have not been done by the Appellants. The Appellant Company, when it started its activities in the year 2002, produced a tariff certificate issued by the Assistant Director, Directorate of Commerce & Industries, in the name of M/s.Aalayance E-Commission Services Private Ltd and, based on this Certificate, BESCO appears to have categorised the Company under HT 2(a) tariff. Later, in the year 2006, the 2nd Appellant (Company) got its name changed to M/s.HCL EAI Services Limited under the Companies Act, but it did not bring this change to the notice of BESCO. This change of company's name came to light only in 2011 when Internal Audit Wing took up the inspection of the subject installation. The Internal Audit observed that

(a) ***"As per fresh incorporation certificate, firm name changed from M/s Aalayance E-Com Private Ltd Services to HCL EAI Services Pvt.Ltd., (b) Industries & Commerce certificate issued in the name of M/s Aalayance E-Com private limited services (c) registered consumer being Smt Shashikala, but till date no name transfer has been taken place either in the name of M/s Aalayance E-Com private Ltd services nor in M/s.HCL EAI Services Private Ltd and (d) subsequent to change of name of firm, no new power tariff certificate has been received from firm side, this short claim is raised."***

21. In the light of these Audit observations, the Licensee cannot be expected to extend HT-2(a) tariff to the 2nd Appellant when change of name of the Company had been noticed. In the present case, though the 1st Respondent gave sufficient time to the Appellants to bring fresh tariff certificate in the name of M/s.HCL EAI Services Ltd, they have failed to furnish such Certificate and, hence, back billing appears to be perfectly in order. In fact, BESCO initially extended HT-2(a) tariff to the Appellants based on the tariff certificate issued by the Directorate of Commerce & Industries Department and it is natural that BESCO insisted on fresh certificate from the IT/BT Department when name of the company had been changed. It appears from tariff certificate that the Appellant, in 2002, have obtained certificate from the Assistant Director, Directorate of Commerce & Industries, though they were to bring certificate from the IT/BT Department as per the Government of Karnataka Circular No ITD06 PRM 2001 dated 10th January 2002. This Circular says that ***"The IT & Biotech Companies are treated as "Industrial Consumers" and not "Commercial Consumers" for the purposes of levying electricity tariff as envisaged in the respective policies. The company seeking such concessions shall make an application to KBITS. After due verification of actual requirements of the power for IT/Biotech activities, the Director IT & Biotechnology, will issue a certificate to the company based on which the KPTCL authorities shall levy the Industrial tariff"***. The Internal Audit wing of BESCO has just observed that the Appellants had not furnished fresh tariff

certificate, after the Company had changed its name and it is surprising that, during their inspection, the Audit Wing has failed to point out that even the earlier tariff certificate furnished by the Appellants in the year 2002 was not a valid one. The Appellants, as per the Government Circular cited above, have not furnished a valid tariff certificate from the inception i.e., from 2002 but the Audit Wing has totally over looked this fact and observed that the Appellants had failed to furnish fresh tariff certificate after the Company's name had been changed from 2006 which is factually incorrect. BESCO from the inception has failed to insist on production of correct tariff certificate by the Appellant and extended HT 2(a) tariff based on the tariff certificate issued by the Assistant Director, Directorate of Commerce & Industries which had no powers to issue any such tariff certificates in the light of the Government Circular Dated 10th January 2002 vide No ITD 06 PRM 2001 when such powers had been vested with the IT/BT Department. From the above, it is clear that the Appellants, from the inception, failed to furnish valid tariff certificate issued by the IT/BT Department and, in spite of this, BESCO appears to have turned a blind eye to this lapse and Internal Audit wing also closed its eyes regarding this crucial lapse and pointed out that the Appellant had been liable to pay the back billing charges from 2006 after the Company's name had been changed, which is factually incorrect. There is a lapse on the part Of BESCO in the sense that it has extended concessional tariff to the Appellants from the inception based on invalid certificate issued by the Assistant Director, Directorate of Commerce and Industries and the Internal Audit Wing, though verified the tariff certificate during their inspection, has failed to point out that it was an invalid tariff certificate. These lapses on the part of BESCO and Audit Wing have resulted in huge revenue loss to the Licensee.

22. The Appellants, in their appeal memo, questioned the competence of BESCO to levy Electricity Tax. The Law Officer, BESCO, countering the arguments of the Appellants, submitted that this matter was under challenge and the Hon'ble High Court validated the ordinance issued by the Executive. In view of this clarification, the contention of the Appellants is hereby rejected as factually incorrect.

23. The Appellants in their appeal memo claimed that BESCO, in several cases, had withdrawn back billing charges and similar benefit should be extended to them. The Law Officer, BESCO, rebutted these contentions and submitted that in case of M/s Safina Towers (P) Limited, BESCO had not withdrawn back billing charges. Since contrary is not proved by the Appellants, their contention is hereby rejected.

24. Regarding M/s Talisma Corporation (P) Ltd., the Law Officer, BESCO submitted that the matter is being enquired into by a Retired District & Sessions Judge and action would be taken based on the enquiry report. In the light of this submission, the Appellants' claim that it should be treated on par with the M/s.Talisma Corporation (P) Ltd. is hereby rejected as there is no merit in such argument.

25. The Appellants have cited M/s Hinduja Global Solutions (P) Ltd. case in their appeal memo and claimed that BESCO had violated the judgement and there is a contempt case pending in the Hon'ble High Court against the Managing Director, BESCO. The Law Officer, BESCO, in his counter, clarified that BESCO is strictly following the Court directions and there is no contempt case pending in the Court and the contempt against the Managing Director, BESCO had been dropped. In view of these clarifications, the contention of the Appellants that BESCO is not following the Court directives is hereby rejected as the same is not proved.

26. Hence, this Authority does not see any merit in the appeal warranting interference in the impugned order. In the light of the above discussions, the following order is passed.

ORDER

27. For the foregoing reasons, **the appeal is dismissed.**


(B.R. Jayaramaraje Urs)
Electricity Ombudsman

1. Smt. K.S. Shashikala, # 1 to 4, Kathilapalya Village, Koramangala Layout, Bangalore (represented by his Legal Counsel, Sri Shridhar Prabhu, Advocate, Bangalore).

2. The Chairperson, Consumer Grievance Redressal Forum, BESCO, Bangalore

3. The Assistant Executive Engineer (Ele), O & M S-4 Sub Division, BESCO, Koramangala, Bangalore (represented by Shri Vinayaka, Law Officer, BESCO, Bangalore).

4. Managing Directors of ESCOMs.

5. Shri Vinayaka, Law Officer, BESCO Corporate Office, K.R. Circle, Bangalore

6. PS to Hon. Chairman, KERC

7. PS to Secretary, KERC