

D-497



## BEFORE THE ELECTRICITY OMBUDSMAN

9/2 ,6th Floor, Mahalakshmi Chambers, M.G Road,Bangalore-560001

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

Case No. OMB/B/G-206/2015

Dated the 27<sup>th</sup> April 2015

M/s K.M.K & Sons,  
No.53,J.C Industrial Layout,  
Kanakapura Road,  
Bangalore-560062.  
(By Sri M.Nagaraju, Adv)

.... Appellant

V/S

1) The Assistant Executive Engineer(EI),  
O&M,S-5 Sub-Division, BESCO, ISRO  
Lay out, Bangalore-560078  
(Sri R.Kumar, AEE in person)

2)The Chairperson,  
Consumer Grievance Redressal Forum,  
(CGRF),Office Of the Superintending Engineer,  
BESCO, West Circle,05,3rd stage  
Bhimajyothi HBCS Lay Out, Next to  
Chord Road Hospital, Basaveshwara  
Nagar,Bangalore-560079

.... Respondents

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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 (hereinafter referred to as the 2nd Respondent) vide order No. CGRF/46/2014-15/20.01.2015 in regard to the complaint filed by the appellant regarding issue of back bill by the 1<sup>st</sup> respondent for Rs. 1,16,090/-. Aggrieved by the orders passed by the CGRF, the appellant has submitted his case as under:

2. The appellant is an electricity consumer of BESCO bearing RR No. BS5p429. Installation was serviced on 30.08.1988 with a sanctioned load of 40 HP under LT-5 tariff schedule. The Vigilance wing of BESCO, after conducting surprise inspection of the subject installation, recommended for back billing on the grounds of the appellant misusing industrial tariff for commercial purposes. The Vigilance wing of BESCO did not furnish a copy of the mahazar or a copy of the inspection report to the appellant. However, the 1st Respondent served a provisional assessment orders on the appellant for Rs. 1,16,090/- with 15 days time to file objections, if any, against the provisional assessment order. The appellant, in his objections, categorically denied having misused LT- 5 tariff for commercial purposes. without considering the objections filed by the appellant, the 1st respondent passed final assessment orders dated 12.12.2014 directing the appellant to pay back billing charges of Rs. 1,16,090/-. Aggrieved by the orders passed by the 1st Respondent, the appellant filed a complaint before the CGRF and the CGRF, Bangalore Urban District passed the impugned orders without considering the written arguments and the points raised by the appellant in his complaint. Further, the appellant contended before the CGRF that the 1st respondent without providing copies of the mahazar and inspection report had passed the final assessment order. CGRF without considering the pleas

of the appellant, passed the impugned order dismissing the appeal as not maintainable.

3. The 2nd Respondent's comments were called vide this office letter No OMB/B/G 206/2015/D-481/24.03.2015.

4. The 2nd Respondent, in his comments, submitted that the vigilance team of BESCO during their surprise inspection of subject installation dated 10.07.2014 found the appellant misusing the LT-5 tariff for commercial purposes during the previous three years and based on the vigilance report, the 1st Respondent passed a provisional assessment orders vide No AEE/S5/AAO/SA/1240/14.09.2014 for Rs 3,29,108/ with 15 days notice to the appellant to file objections, if any, regarding the back billing and also to appear before the 1<sup>st</sup> Respondent vide letters (a) No. AEE/S5/AAO/SA/1657/03.11.2014 & (b) No. AEE/S5/AAO/SA/1690-91/13.11.2014. Neither the appellant nor the Vigilance AEE appeared before the 1<sup>st</sup> respondent. However, as per clause 42.02 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, back billing had been limited to 12 months for Rs. 1,16,090/- and hence prayed this authority to dismiss the appeal and confirm the orders passed by the 2<sup>nd</sup> Respondent.

5. The case was taken up for hearing on 17.04.2015. on behalf of the appellant, Advocate Shri M.Nagaraju appeared and put forth his arguments and on behalf of BESCO, Shri I.R.Kumar, AEE(EI) appeared and advanced his arguments.

6. The advocate for the appellant, Shri M.Nagaraju submitted that power installation bearing RR No. BS 5p 429 was serviced on 30.08.1988 with a sanctioned load of 40 HP under LT-5 tariff schedule. At the time of obtaining power supply, the appellant had furnished the certificate issued by the Department of Commerce & Industries. The Certificate is produced as Annexure B in the appeal memo. From the date of service, power has been used for repacking of edible oil, manufacture and extraction of edible oil from oil seeds. 'Manufacturing' is defined in the Factories Act, 1948 which includes packing. Hence, the appellant has not misused power as alleged by the vigilance wing of BESCO and therefore not liable to pay back billing charges as claimed by the 1st Respondent.

7. Advocate added that AEE(EI) Vigilance inspected the installation of the appellant on 10.07.2014 and observed that the appellant had misused LT-5 tariff for commercial purposes. However, the AEE(Vigilance) did not provide a copy of the mahazar nor inspection report. The AEE (Vigilance) obtained the signature of the appellant for having supplied copies of mahazar and inspection report, but did not supply copies. Inspecting authorities have observed the existence of machineries in the premises and this is evident from their report.

8. Further, based on the vigilance report, the AEE(EI),O&M sub-Division served a provisional assessment orders for Rs 3,29,018/ with a notice to file objection, if any. In response to this notice, the appellant filed a complaint before CGRF. The CGRF passed orders dismissing the complaint on grounds of non-maintainability although packing comes under the definition of manufacturing and power is used for industrial purposes. Though CGRF had jurisdiction to hear the complaint, it took a stand that it lacked jurisdiction in

the matter. In fact, wrong classification of tariff also comes under the definition of complaint. KERC tariff orders also make it clear that LT-5 consumer can use power for lighting, heating in his premises. Thus power can be used for go down lighting. Hence, the appellant has not misused power and hence back billing demand should be set aside.

9. The AEE(EI) argued that installation bearing RR No BS5p 429 was serviced on 26.08.1988 for 40 HP(39 HP+ 600 watts) and power was sanctioned in the name of Murugesh under LT -5 tariff schedule for running an Oil Mill. On 10.07.2014, the AEE(EI) Vigilance inspected the installation and found the appellant using LT-5 power for godown purposes and stocking the sachets of other brands.

10. During the hearing, the 1st Respondent showed photos taken in his mobile telephone which showed oil tins kept in the premises of the appellant. Based on this, the first Respondent argued that the appellant engaged in sales of edible oil and not engaged in packing of oil. He clarified that the photos presented are not taken by him. Hence, this authority advised the AEE(EI) on 22.04.2015 to personally visit the appellant's unit and give his report regarding the nature of activity taking place in the appellant's unit.

11. The AEE(EI) submitted his inspection report on the next date of hearing i.e 27.04.2015. In his report he submitted that he had inspected the premises belonging to the appellant on 27.04.2015 and found the appellant using the premises for packing the filtered oil which comes under the definition of manufacture and hence it is an industry.

12. Further, the AEE(EL) submitted in his report that the appellant is not using the premises for commercial purposes but using the premises for sacheting bulk edible oil and the vigilance report has not reflected the correct picture of the activity going on in the premises and therefore prayed this authority to pass necessary orders in the light of the inspection report.

13. This authority has considered the inspection report submitted by the 1st Respondent which admits the vigilance report not reflecting the actual position in the field and further the report also disclosed the appellant engaging in sacheting bulk edible oil procured from elsewhere which activity comes under packing and comes under the definition of manufacturing and hence an industry.

14. The report also disclosed that the appellant is not using the premises for commercial purpose for retail sale of edible oil. Hence the following order:

#### ORDER

In the light of the inspection report submitted by the AEE(EI) O&M sub division, the back billing raised for Rs. 1,16,090/ against the appellant by the 1st Respondent is set aside. In the process appeal succeeds.



(B.R Jayaramaraje Urs)  
Electricity ombudsman

1. M/s. s K.M.K & Sons, No.53, J.C. Industrial Layout, Kanakapura Road, Bangalore-560062. (represented by its Legal Counsel Sri M.Nagaraju, Advocate, Bangalore).

2) The Assistant Executive Engineer(EI), O&M, S-5 Sub-Division, BESCO, ISRO, Layout, Bangalore-560078

3) The chairperson, consumer Grievance Redressal Forum, Office of the Superintending Engineer, BESCO, West Circle, 05, 3rd Stage, Bhimajyothi HBCS Layout, Next to chord 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. Secretary, KERC

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