



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-209/2015

Dated : 10th June 2015

M/s. Nandhana Palace,
No.525, 8th Block, K.R.Garden
Koramangala,Bangalore-95
(By Sri M.A.Devli, Adv)

.... Appellant

V/S

1. The Assistant Executive Engineer(EI)
S-4 Sub-Division, BESCO,
B.D.A complex, Koramangala
Bangalore-560 034
(Party in person)

2. The Chairperson,
Consumer Grievance Redressal Forum
Office of the Superintending Engineer,
BESCO, West Circle,
C.A site No.05, 3rd stage,
Bhimajyothi HBCS layout
Basaveshwaranagar
Bangalore-560079

..... Respondents

1. This is an appeal under clause 22.02 of KERC (CGRF & Ombudsman) Regulations, 2004, against the orders passed by the CGRF, Bangalore Urban District, Bangalore (here in after referred to as the 2nd Respondent) vide its order No CGRF/206/2012-2013/20.03.2013/1145-51 dated 27th May 2014 with respect to the complaint filed by the appellant regarding the demand raised against him for Rs. 2,54,678/ on grounds of misuse of power. The CGRF declined to interfere in the orders passed by the 1st Respondent. Aggrieved by the orders passed by the CGRF, the appellant has submitted his case as under:

(a) The appellant is a registered electricity consumer of BESCO. Installation bearing R.R No 4 SLP 2477 stands in her name. The installation was serviced on 02.02.1996 with a sanctioned load of 50 HP. it was serviced under LT-5 tariff schedule and continued to be under that category.

(b) At the time of servicing, the installation was provided with an ETV meter. There was an inspection made by the vigilance on 26.04.2012. The vigilance report says that the appellant has put up an Iron Beam Structure over his two storied building. The vigilance in their report has listed welding transformer and generator as used for this purpose. The load pointed 1.90 kw (1900 watts)+ 12 KVA used for welding transformer. The vigilance reported that a structure above the existing 2nd floor was being put using iron beam and other iron material by using welding machine of 12 KVA power. The 1st Respondent Sub-division, based on the draft bill prepared and communicated by the vigilance, issued a demand for Rs 2,54,677.50 and also directed the appellant to file objection, if any within 15 days, failing which it would disconnect power supply to the installation. This demand was not communicated to the appellant but included in

the regular monthly energy bill issued to the appellant for September 2012. On approaching the office, a copy of the notice was handed over to the appellant which demanded a payment of Rs. 2,54,677.50 for misuse of power. Objections were filed to this demand on 20.10.2012. Final assessment orders were issued on 31.10.2012. The appellant's objections were there before the assessment officer but he claimed that he had not received any objections. The Appellant through a letter dated 05.11.2012 to the AEE (EI) pointed out defects in the order and also sought reconsideration of his order. The appellant in his representation urged the 1st Respondent to reconsider the issue on two important grounds:

- (i) First, putting up a steel structure using a generator & welding transformer does not amount to construction activity and consumer has liberty to put up such fabrications as per Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.
- (ii) Second, there is no provision to back bill the appellant under LT-7 tariff which is the highest under any tariff category.

The appellant approached the AEE(EI) several times but to no avail. Hence, the appellant approached the CGRF. The CGRF without fully hearing the appellant, passed the impugned orders. Hence, this appeal.

2. The 1st respondent's response was called vide this office letter No OMB/B/G-2009/2015 D 489-dated 08.04.2015.

3. The 1st respondent in his counter and also during the hearing submitted that installation bearing R.R No 4 SPL 2477 had been serviced on

02.02.1996 with a sanctioned load of 50 HP under LT-5 tariff schedule. Power had been sanctioned in the name of Smt Rukmini, who is the owner of the building and who sold the property to one Ravichandra, who is the owner of Nandhana palace on 28.03.2012.

4. Vigilance Squad, BESCO inspected the appellant's premises on 26.04.2012 and observed that there had been no industrial activity in the building i.e Ground, First and second floor and the power supply had been extended to 3rd and 4th floor to put up Iron beam structures using cutting, grinding and welding machines and also for 2.50 HP water pump. Vigilance found total load of 1.90 kW+ 12 KVA =2.5 HP. This was well within the sanctioned load and the ETV meter reflected the total load.

5. The 1st respondent added that Power had been sanctioned for industrial purposes, but the consumer had sold the property and the incumbent had been found using power for construction of 3rd and 4th floor and also to run the machineries. Regulation 12.02 of Conditions of Supply of Electricity of Distribution Licensee in the State of Karnataka provides for temporary supply of power for bonafide domestic use without exceeding the sanctioned load.

6. Further, the 1st Respondent admitted that his predecessor had passed final assessment orders without giving opportunity to the appellant. Provision 42.02 of Conditions of supply of electricity of Distribution Licensee in the State of Karnataka provided for levy of penalty for a period of 6 months preceding inspection at twice the regular tariff. Para 21 of tariff order (2015) states that in case of welding transformers, the connected load shall be taken as:(a) half the maximum capacity in KVA as per the name plate specified under IS:1851 or (b) Half the maximum capacity in KVA as recorded during the rating by the Licensee, whichever is higher. Welding transformer

capacity could be rated accordingly. Vigilance had reported the appellant using 12 KVA power. As per para 21 of Tariff Order, Vigilance/AEE (EI) had been required to consider half the maximum capacity in KVA as recorded during the rating. However, this aspects had been overlooked by both the Vigilance and AEE (EI).

7. Both parties were informed vide letter No OMB/B/G-209/2015/499 dated 29.04.2015 regarding availability of sub regulation 1 of regulation 20 of KERC(Consumer Grievance Redressal Forum & Ombudsman) Regulations,2004 which provides for settlement through conciliation & mediation. However, both parties have not availed this opportunity. Hence, I am proceeding to pass an order in this matter.

8. Case was taken up for hearing on 15.05.2015. On behalf of the appellant, Shri Delvi, authorised representative appeared and submitted his arguments. On behalf of BESCO, the AEE(EI) O&M sub-Division appeared and advanced his arguments.

9. During the hearing, both parties reiterated the submission made in the appeal memo and the statement of objections respectively.

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

a) Whether the 1st Respondent is right in including the demand under dispute in the monthly energy bill without serving a provisional assessment order on the appellant?

b) whether the 1st respondent is right in passing final assessment orders without considering the objections filed by the appellant?

c) whether the 1st respondent is right in levying penalty for 22 months and whether such levy of penalty is in line with Regulation 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka?

d) Whether the 1st Respondent has followed para 21 of tariff order in assessing the connected load?

11. Perusal of records reveals the 1st respondent including the demand in the regular monthly bill without serving any provisional assessment orders on the appellant which amounts to violation of Regulation 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. As per Regulation 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, *“for preferring the supplement claims, the Licensee shall serve a provisional assessment orders within 15 days, notice to the consumer to file his objections, if any, against the provisional assessment orders on account of faulty meter or short claims caused due to erroneous billing and obtain consumer's reply. After considering the objections of the consumer, the Licensee shall issue the final order.”*

12. In the first instance, the 1st respondent ought not to have included the demand straight away in the monthly bill without following the procedure laid down under regulation 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and without passing final assessment order.

13. Secondly, the 1st Respondent is found to have included the demand in the monthly bill in the first instance and serving the provisional

assessment order later by contravening Regulation 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

14. Thirdly, the appellant claims that he had filed objections to the demand but the 1st respondent's assessment order does not say anything about the objections filed by the appellant. On the other hand, the 1st Respondent in his order states that he has not received any objections from the appellant. It is not clear whether the 1st Respondent has passed the assessment orders in spite of appellant filing objections to the demand.

15. Fourth, the 1st Respondent appears to have issued demand blindly based on the draft demand notice sent by the Vigilance without applying his mind.

16. The AEE (EI) is found to have not considered para 21 of Tariff Order while calculating the connected load. Vigilance has recorded 12 K VA as connected load during their rating. The AEE (EI) ought to have taken half the maximum capacity in KVA as recorded during the rating by the vigilance. If this were considered, connected load would come to 6 KVA. Prima facie this is found to have been overlooked by the AEE (EI).

17. In view of the above, it is considered necessary to remand the case to the 1st respondent to rehear the entire matter afresh following the procedure laid down under regulation 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka in the interest of justice. Hence the following order.

ORDER

For the foregoing reasons, the impugned orders passed by the CGRF is set aside. The case is remanded to the 1st Respondent to pass fresh assessment orders after affording opportunity to the appellant under clause

29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

In the result, CGRF order is set aside.

Consequently, the appeal partly succeeds.



(B.R Jayaramaraje Urs)
Electricity Ombudsman

1. M/s. Nandhana Palace, No.525,8th Block, K.R.Garden, Koramangala,Bangalore-95 (represented by its Legal Counsel Sri M.A.Delvi, Advocate, Bangalore).
2. The Assistant Executive Engineer(EI), S-4 Sub-Division, BESCO, B.D.A complex, Koramangala, Bangalore-560 034
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
