



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-189/2014/411**
Dated **18.09.2014**

Shri Narayan Das,
Railway Parallel Road,
Kumara Park West,
BANGALORE
(Represented by Sri M.A.Delvi,
Authorised Representative)

.. **Appellant**

Vs

1. The Asst. Executive Engineer(EI)
O & M C-2 Sub Division,
BESCOM,
Malleshwaram,
BANGALORE-560003

2. The Chairperson
Consumer Grievance Redressal Forum
Office of the Superintending Engineer,
BESCOM, West Circle,
#05, 3rd Stage,
Bhimajothi HBCS Layout,
Basaveshwarnagar,
BANGALORE-560079

.. **Respondents**

1. This is an appeal under Clause 21.02 of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004 against the order passed by the Consumer Grievance Redressal Forum, BESCO, Bangalore Urban (hereinafter referred to as the 2nd Respondent) vide No CGRF/11/2013-14/23.12.2013/109-15 dated 28.05.2014 in respect of Appellant's plea for setting aside back billing raised for Rs.9,69,767/- by the Assistant Executive Engineer, O & M C-2 Sub-Division, Malleshwaram, Bangalore-560003 (hereinafter referred to as the 1st Respondent) and issue of directions to the 1st Respondent to pass fresh assessment order by following Clause 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. The 2nd Respondent declined to grant any relief to the Appellant in the matter. Aggrieved by the order passed by the 2nd Respondent, the Appellant has submitted his case as under:

2. The Appellant is an electricity consumer of BESCO. The installation bearing R.R No C2HT28, which stands in the name of the Appellant, was serviced on 14.02.1998 with a sanctioned load of 250 kVA. The installation was categorized under HT-2(a) tariff schedule on 29.06.2000. This sanctioned load was later reduced from 250 kVA to 175 kVA on 30.06.2000.

3. The Executive Engineer (EI) MT. Division, BMAZ, BESCO, Bangalore inspected the subject installation on 26.09.2013 and observed the subject meter recording slow by -34% and also the previous occupant Viz., Satyam Software who had been billed under HT-2(a) not carrying out any activities in the building and vacated the building three years before and in their place new tenants, namely, M/s ESKO Graphics India Private Ltd Company and M/s Star Health Insurance Company had been in position and using the building for running offices and they were being billed under HT-2(a) tariff which amounted to misuse of power and, hence, (a) the Appellant to be back billed for slow recording of meter by -34% and (b) the Appellant to be levied penalty for misusing power.

4. The MT Rating Division has failed to carry out the calibration properly and no reasons were given for the slow recording of the meter or the duration of slow recording of the meter. There is no documentary evidence such as down loaded data and, hence, in the absence of such details, the very conclusion that meter is slow recording by -34% is under doubt. Further the 2nd Respondent has passed the impugned order without applying its mind and without giving opportunity to the Appellant.

5. The subject installation is a HT installation and subject to calibration every month directly by the 1st Respondent and, hence, in the event of any change of usage, it would not have gone unnoticed. This act is deliberate and done to back bill the installation at a later date. Any reclassification in terms of Clause 3.04 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka does not entail back billing. Any re-classification requires issue of notice to the Appellant and entering into fresh agreement between the parties. All these aspects have been overlooked by the 2nd Respondent and, hence, prayed this Authority to set aside the impugned order passed by the 2nd Respondent and to remand the case to the 2nd Respondent to afford opportunity to the Appellant and to pass fresh order.

6. The 1st Respondent's comments were called vide letter No. OMB/B/G-189/2014/386 dated 10.07.2014

7. The 1st Respondent filed statement of objections to the points raised by the Appellant in the Appeal Memo dated 19.07.2014. The 1st Respondent, in his statement of objections, denied the allegations made in the appeal memo and stated that the -34% slow recording of the meter and change of electricity usage for other than software purposes had been observed by the Executive Engineer(EI), M.T.Rating Division during his inspection which amounted to misuse of power and, hence, based on MT Rating Division's report, back billing charges had been raised vide letter No AGM/M/C2/4567 dated 24.10.2013. The Appellant had not filed objection to the back

billing raised for a period of two months although the office had received acknowledgement dated 26.10.2013 for receipt of letter. As per Clause 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, the Appellant had been required to file objections, if any, within 15 days from the date of issue of back billing notice. Since the Consumer had taken two months to reply to the notice, he had been advised to pay the back billing charges immediately to avoid disconnection. Hence, prayed this Authority to dismiss the appeal and to confirm the order passed by the 2nd Respondent.

8. The case was taken up for hearing on 18.08.2014. On behalf of the Appellant, the Authorized Representative Shri M.A.Delvi appeared and put forth his arguments and, on behalf of the 1st Respondent, Shri Kiran, Assistant Executive Engineer(EI), C-2 Sub-Division, BESCO, Malleshwaram appeared and advanced his arguments. Arguments got concluded on 18.09.2014. During the hearing, both the Authorized Representative of the Appellant and the 1st Respondent reiterated the submissions made in the appeal memo and statement of objections respectively.

9. Both parties were informed vide letter No.OMB/B/G-189/2014/399 dated 05.08.2014 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.

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

a) *Whether the 1st Respondent has followed the procedure laid down under Clause 29.03 of the Conditions of Supply of Electricity of*

Distribution Licensees in the State of Karnataka while making supplementary claims as regards slow recording of the meter?

b)) Whether the 1st Respondent has followed the procedure laid down under Clause 42.02(a) of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka while levying penalty for misuse of power?

11. In order to answer the first question, we will have to refer to the MT Rating Division's inspection report and also the notice issued by the 1st Respondent dated 24.10.2013 advising the Appellant to pay back billing charges for Rs.9,69,767/-. These back billing charges relate to (a) slow recording of the subject meter by -34% and (b) misuse of power under HT-2(a) tariff. The MT Rating Division, in its inspection report, observed slow recording of the meter by -34% and also misuse of power under HT2 (a) tariff by the Appellant. The M.T Rating Division advised the 1st Respondent to raise back bill (a) for slow recording of the meter and (b) for misuse of tariff under HT-2(a). Based on this report, the 1st Respondent appeared to have issued notice advising the Appellant to pay Rs.1,32,163/- straight away without passing provisional and final assessment orders and without giving opportunity to the Appellant to file objection, if any. The 1st Respondent neither appears to have given any opportunity to the Appellant nor found to have passed assessment orders as per Clause 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka which says ***"For preferring the supplemental claims, the Licensee shall serve a provisional order within 15 days' notice to the consumer to file his objections, if any, against the provisional assessment order on account of faulty meter or short claims caused due to erroneous billing and obtain his reply. After considering the objections of the consumer, the Licensee shall issue the final order. The consumer shall be intimated to make the payments within 15 days of the date of intimation, failing which the power supply shall be disconnected and such amount shall be deemed to be arrears of electricity charges."*** It is clear from the notice dated 24.10.2013 that the 1st Respondent has not followed the procedure laid down under Clause 29.03 of the Conditions of Supply of

Electricity of Distribution Licensees in the State of Karnataka while making supplementary claims and found to have issued a notice directly advising the Appellant to pay Rs.1,32,163/- within 30 days which is found to be not in conformity with Clause 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and, hence, liable to be set aside.

12. Coming to the second question, the M.T Rating Division report is very clear that the Appellant, being the owner of the building, has not informed the 1st Respondent, after the building had been vacated by M/s.Satyam Software and further failed to intimate occupation of the building by M/s.ESKO Graphics Pvt.Ltd. Company and M/s.Star Health Insurance Company. Inspection report disclosed that the new tenants were using the building for office purposes which activity falls under HT-2(b) tariff schedule. The Appellant has failed to bring to the notice of the 1st Respondent regarding change of tenants and their tariff eligibility and also change of usage of power and, thus, the Appellant is found to have misused power sanctioned specifically for running software industry under HT-2(a) for running offices. Clause 42.02(a) of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka which deals with Misuse Of Electricity says that ***"If at any time, the energy supplied under one method of charging is misused for purpose for which a higher method of charging in force, the Assessing Officer shall assess the quantum of energy and difference in fixed charges for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of 12 months immediately preceding the date of inspection and charge at two times the tariff applicable to the purpose for which energy is misused."***

13. ***"The Consumer shall pay such amount within 30 days from the date of claim, failing which, the installation is liable for disconnection and such amount shall be deemed to be arrears of electricity charges."***

As far as misuse of power is concerned, the 1st Respondent is found to have made a valid claim under Clause 42.02(a) and advised the Appellant to pay the charges at two times the tariff applicable for the purpose for which energy is supplied which comes to Rs.7,41,278/- within 30 days and, hence, no illegality is found to have been committed by the Appellant warranting interference by this Authority.

14. From the above discussion, we can come to the following conclusions:

(a) Supplementary claims made for Rs.1,32,163/- is not as per Clause 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka with regard to slow recording of the meter and, hence, requires remanding of the case to the 1st Respondent for passing fresh assessment order following the procedure.

(b) The demand made for misuse of power conforms to Clause 42.02(a) of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and, hence, requires no interference by this Authority in the decision taken by the 1st Respondent. Therefore, the following order:

ORDER

15. For the foregoing reasons, back billing charges raised for Rs.1,32,163/- towards slow recording of the meter by -34% are set aside and the matter is remanded to the 1st Respondent for passing fresh assessment order following Clause 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

16. The claims made under Clause 42.02(a) of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka for Rs.7,41,278/- are **hereby upheld.**

17. Consequently, the appeal **party succeeds.**



(B.R.Jayaramaraje Urs)
Electricity Ombudsman

1. Shri Narayan Das, Railway Parallel Road, Kumara Park West, Bangalore-560058 (represented by his Authorised Representative, Sri. M.A.Delvi, Bangalore).
2. Chairperson, Consumer Grievance Redressal Forum, Bangalore Urban District, Basaveshwarnagar, Bangalore.
3. The Assistant Executive Engineer (Ele), O & M C-2 Sub Division, BESCO, Malleshwaram, Bangalore
4. Shri Vinayaka, Law Officer, BESCO Headquarters, K.R.Circle, Bangalore-560001.
5. Managing Directors of ESCOMs.
6. PS to Hon. Chairman, KERC
7. PS to Hon.Member (A), KERC
8. PS to Hon.Member (M), KERC
9. PS to Secretary, KERC