



D-547

BEFORE THE ELECTRICITY OMBUDSMAN

9/2,6th Floor, Mahalakshmi Chambers, M.G.Road Bangalore – 560 001

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

Case No. OMB/H/G-213/2015

Dated 3rd August 2015

Smt Nisha Malagi,
C/o Tushar M.Baddi,
Near SBI, Keshwapura,
Hubballi

... Appellant

**(Represented by y Sri Tushar M Baddi, Authorized Representative
for the Appellant)**

V/S

1) The Assistant Executive Engineer(EI)
City Sub- Division-3,HESCOM
Industrial Estate, Gokul Road,
HUBLI.

(Party in Person)

2) The Chairperson,
CGRF,Dharwar District,
Hubballi HQ,
Office of the Superintending Engineer, O&M Circle

1. This is an appeal under clause 22.02 of KERC (CGRF & Ombudsman) Regulations, 2004 against the orders passed by the CGRF, Dharwad District, HQs Hubballi ,HESCOM vide order No AE(EI) DYCA/HISA-1/CGRF/File-162/15841-44 dated 31.03.2015 with regard to appellant's complaint regarding issue of back bill by HESCOM for Rs.12,952/- on the alleged misuse of power. Aggrieved by the order passed by the CGRF,the appellant has submitted his case as under:

(a) Installation bearing R.R No. 407279-A stands in the name of Nisha Malagi. It was serviced on 19.06.2007 under LT-2(a) tariff schedule. This installation was not in use. The appellant rented out her premises to one Shridhar Hulamani and he in turn applied and got power sanctioned for running a cold storage unit. The installation was assigned RR No. MP 408160. The other installation bearing RR No. 407279-A was kept idle.

(b) When things stood at this, all of a sudden, the AEE(EI), O & M sub-division, issued a demand for Rs. 12,952/- for alleged misuse of tariff from LT-2(a) to LT-3 (commercial). This back billing was in relation to R.R No 407279-A. The appellant objected to this demand and sought clarification as to how the demand was raised against idle installation ,but to no avail.

- (c) The AEE(EI) has failed to follow clause 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka while preferring the supplementary claims. No provisional assessment orders were passed nor copy of the MAHAZAR supplied to the appellant.
- (d) AEE(EI) has raised demand in respect of an installation which was not in use and appellant paying only minimum charges.
- (e) Before raising the demand, Section Officer visited the premises of the appellant on 21.12.2012 and sent a report stating that the premises was vacant and installation was not in use and the appellant was paying only minimum charges. This report was not considered by the AEE(EI).
- (f) HESCOM issued provisional assessment order on 12.12.2012 and passed final assessment orders 27.02.2013. Before passing final assessment orders, HESCOM had included the arrears in the January 2013 Monthly power bill which clearly shows that HESCOM has not followed the procedure laid down under clause 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and contrarily came to a premature conclusion that the appellant had misused power which is against to principles of natural justice and therefore liable to be set aside.

(g) Since no steps were taken by the AEE(EI) to withdraw the demand, the appellant filed a complaint before the District CGRF on 27.03.2013. During the pendency of the case before the CGRF, the appellant was forced to pay the disputed amount. The appellant paid the amount under protest. The CGRF, passed orders rejecting the pleas of the appellant on the grounds that it has no jurisdiction. Hence, prayed this authority to issue directions to the 1st Respondent to refund the amount already paid.

2. The 1st Respondent's comments were called vide letter No OMB/H/G.213/2015/D-503 dated 07.05.2015. In pursuance to this, the AEE(EI) filed his statement of objections vide letter dated 27.09.2013.

3. The 1st Respondent in his statement of objections, submitted that the AEE, Vigilance after inspecting the installation bearing No. 407279-A, reported appellant having misused LT-2(a) tariff (Domestic) for commercial purposes i.e LT-3 tariff and hence he should to be back billed under LT -3 tariff. The AEE (EI) further averred that Vigilance had reported that appellant having a residential house and a portion of it is used as a shop and had rented out both the portions i.e shop and the residential house to one Shridhar Hulmani, who in turn had been using both portions for storage and distribution of ice cream and also for running an Office namely M/s. Suvarna Inc. Based on the Vigilance report, AEE(EI) issued

a provisional notice to the appellant and the appellant dated 12.12.2012 had filed objections to the notice on 12.02.2013. After considering her objections, AEE(EI) passed final assessment order confirming the provisional assessment orders on 27.02.2013. Aggrieved by the final assessment order passed by the AEE(EI), the appellant approached CGRF and the CGRF, after hearing the parties, dismissed the complaint filed by the appellant on the grounds of lack of jurisdiction. However, the appellant paid the amount during the pendency of the case before the CGRF on 05.03.2015.

4. The 1st Respondent added that he did not agree with the statement of the appellant that installation bearing RR No. 407279-A had been kept idle and not in use and maintained that the installation had been very much in use and the average consumption of power per month would come to 55 units per month. The 1st Respondent contended that the appellant's representative namely Shri Manjunath, had been present during inspection and attested his signature on the MAHAZAR and other witnesses namely Shri B.P.Gollar, Accountant, AEE(EI) Vigilance and Police Inspector had also been present and attested their signature, there was no flaw in the mahazar. Hence, prayed this authority to dismiss the appeal and confirm the orders passed by the CGRF.

5. Both parties were informed vide this office letter No OMB/H/G.213/2015/d-503 dated 07.05.2015 regarding availability of Sub-Regulation 20(1) of KERC (consumer Grievance Redressal Forum

& Ombudsman) Regulations, 2004, which both parties have not availed. Hence, I am proceeding to pass an order in this matter.

6. Case was taken up for hearing on 14.07.2015 and arguments came to be closed on the same day. On behalf of the appellant, his authorised representative viza., Shri Tushar.M.Baddi, appeared and advanced his arguments. The 1st respondent Shri Ramesh Rathod personally appeared and put forth his arguments.

7. Both parties during the hearing, reiterated the submissions made in the appeal memo and statement of objections respectively.

8. Having regard to the contending positions of the parties, the issue that emerges for our consideration is “whether the Licensee has followed clause 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka while preferring the supplementary claims”?

9. It is seen from the records that the Licensee on the basis of Vigilance report has issued a provisional notice dated 12.12.2012 demanding Rs. 12,952/- for alleged misuse of power. Later, Licensee is seen to have issued one more letter dated 27.02.2013 to the appellant clarifying that he (appellant) had not filed objection to the provisional assessment order and hence he had included the arrears in the monthly energy bill and hence to pay the amount early.

10. Clause 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka has laid down the procedure for preferring the supplementary claims which states *“For preferring the supplemental claims, the Licensee shall serve a provisional assessment 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 payment within 15 days of the date of intimation, failing which, the power supply to the installation shall be disconnected and such amount shall be deemed to be arrears of electricity charges. The licensee shall indicate in the final order, the provisions of KERC (Consumers Grievance Redressal Forum & Ombudsman) Regulations, 2004”*.

11. When we examine the issue in this background, it emerges that the Licensee has issued only provisional assessment order and not issued final assessment order, thus not followed Clause 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. This is clear from the letter dated 27.02.2013 issued by the AEE(EI) which confirms that he had not passed final assessment orders on account of the appellant not filing objections to his provisional assessment orders and hence he had included the arrears in the monthly energy bill. In the letter, the AEE (EI) has directed the appellant to pay the amount early.

12. As per clause 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, the Licensee cannot issue demand or include the demand in the monthly energy bill before passing final assessment order and in the instant case, the Licensee seen to have included the arrears in the monthly energy bill of the appellant before passing final assessment orders. Just because the appellant has failed to file objections, the Licensee cannot straight away include the demand in the monthly energy bill without passing final assessment order. Irrespective whether the consumer files his objections or not, the Licensee has to pass final orders before claiming the arrears. In case, the consumer fails to file his objections, the Licensee has to state in his order that the consumer has failed to file objections and therefore he was proceeding to pass final orders. After passing final orders, Licensee can raise the demand or include in the energy bill. This is seen to have not been done by the AEE(EI) which amounts to violating clause 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka warranting setting aside of such demand. Hence, the following orders:

ORDER

- 1)The impugned orders passed by the CGRF is set aside.
- 2) The demand raised by the 1st respondent for Rs.12,952/- is hereby set aside.

3)The case is remanded to the 1st Respondent to pass fresh orders following clause 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka within 60 days from the date of issuing this order.

4) In the result ,the appeal succeeds.



(B.R.Jayaramaraje Urs)
Electricity Ombudsman

To :

1. Smt Nisha Malagi, C/o Tushar M.Baddi, Near SBI, Keshwapura, Hubballi.
2. The Assistant Executive Engineer(EI), City Sub- Division-3, HESCOM, Gokul Industrial Estate, HESCOM, Hubballi,
3. The Chairperson, CGRF, Hubballi HQ, Office of the Superintending Engineer, O&M Circle, HESCOM,Tabibland, Hubballi-580020
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
