

D-494



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-205/2015

Dated the 22nd April 2015

M/s. Preusse India (P) Ltd
884, Kamakshipalya Extension,
Bangalore-560079
(By Sri M.A.Delvi, Adv)

... Appellant

V/s

1)The Assistant Executive Engineer(EI)
N-6 Sub -Division, BESCOM, Sunkadakatte,
Bangalore – 560 091
(By Sri Vinayaka, Law Officer, BESCOM)

2) The chairperson,
consumer Grievance Redressal Forum,
Office of the Superintending Engineer,
BESCOM, West Circle,
05,3rd Stage, Bhimajyothi HBCS Layout
Next to chord Hospital
Basaveshwaranagar
Bangalore-560079

... Respondents

1. This is an appeal under clause 21.02 of KERC(CGRF & Ombudsman) Regulations,2004 against the order passed by the CGRF, Bangalore Urban district, Bangalore(here in after referred to as the 2nd respondent) vide order No CGRF/Chairman/WC/5095-100 dated 19.12.2014 in regard to the complaint filed by the appellant challenging the demand notice issued by the 1st Respondent on the grounds of slow recording of the meter. The CGRF declined to interfere in the orders passed by the 1st respondent. Aggrieved by the order passed by the CGRF, the appellant has submitted case as under:

2. The appellant Company is an electricity consumer of BESCO bearing R.R No N2p 3389.The installation was serviced in 2004 with a sanctioned load of 80 HP. The 1st Respondent vide letter dated 11.09.2013 demanded a payment of Rs,2,07,093 within a week which was due on 1.07.2007, failing which he would invoke clause 4.09 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and claim the arrears of subject installation as arrears of the other installation belonging to the appellant. The appellant gave a representation to the Managing Director BESCO against this spurious demand on 21.10.2013 and also explained how their claims were time barred under clause 4.13 of Electricity code 2004 which clearly states that `` *The Licensee shall not recover any arrears after a period of 2 years from the date when such sum became first due, unless such sum has been shown continuously in the bill as recoverable as arrears of the charges of electricity supplied*".

3. Further, two months after the appellant filed the objections against the spurious demand, the 1st respondent came up with his own version vide letter dated 12.12.2013 justifying the spurious claims. In his letter he informed the appellant (a) regarding the action taken to terminate the

agreement under Clause 32.07 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka for non-payment of dues vide order dated 24.07.2007, (b) notice issued to collect the arrears outstanding as arrears of other installation i.e N2p3389 belonging to the appellant and (c) clarification issued that the request of the appellant had not been considered as there were arrears from the appellant. Besides, the 1st Respondent did not follow the procedure prescribed for termination of agreement in the instant case and after terminating the agreement in July 2007, proceeded to adjust the arrears of the installation as arrears of other installation belonging to the appellant dated 31.12.2011. The 1st respondent, again, after a gap of more than 2 years, extended a threat of including the spurious arrears in the bills pertaining to a different RR No.

4. From the above, 3 issues emerge for the consideration of the Ombudsman:

1) whether the 1st Respondent is justified in claiming the arrears of electricity crystallised during July 2007 through a notice dated 11.09.2013 ?

2) whether the termination of agreement effected during 2007 conforms to regulation 32.07 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka?

3) whether there is any justification for adjusting the deposits dated 31.01.2011 after terminating the agreement in July 2007 and when no consumer and supplier relation exists?

5. The 1st respondent's comments were called vide this office letter No OMB/B/G-205/2015/468 dated 22.01.2015.

6. The 1st Respondent, in his comments submitted that clause 4.13 of Karnataka Electricity Supply & Distribution Code relates to recovery of any arrears beyond 2 years provided such sum is shown as arrears continuously for a period of 2 years and this Regulation should be read with section 56(2) of The Electricity Act, 2003. Section 56(2) of the Electricity Act, 2003 is applicable in respect of disconnection of supply for default in making payments. The present case does not come under disconnection category but pertains to termination of agreement relating to installation bearing RR no N2p-3389 standing in the name of shri Hundekar after following clause 32.07 Of ES&D Code.

7. The 1st respondent added that the notice for the termination of agreement had been served on the party on 24.07.2007 and there had been no response from the consumer and hence the agreement had been terminated for non-receipt of reply from the consumer. Hence the procedure contemplated under section 56(2) of the Electricity Act, 2003, is not relevant to the facts and circumstances of the case. Now the issue to be considered is whether the procedure had been followed in recovery of arrears from the consumer in whose name the other installation stands. Having come to know that the consumer had other installation standing in his name, an attempt had been made to recover the amount contemplated in KEB Recovery of Dues Act 1976. Hence, the claims were not spurious as made out by the appellant. Nothing in clause 4.09(V) Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, prevented the Licensee from recovering the arrears relating to the installation under

disconnection as arrears of other installation belonging to the consumer/appellant. It is explicit that except in the case of domestic consumer, dues from a consumer having any other installations in his name, Licensee has a right to recover such dues from such installation. The due process of issuing notice had been met in the case and hence no legal infirmity in the claims.

8. The 1st Respondent further submitted that mere fact of furnishing incorrect adjustment numbers does not anyway vitiate the claims of the respondents. Therefore, prayed this authority to dismiss the appeal and confirm the orders passed by the CGRF.

9. The case was taken up for hearing on 07.04.2013 and concluded on 15.04.2015. On behalf of the appellant, Shri Delvi, authorised representative appeared and put forth his arguments and on behalf of the 1st respondent Shri Vinayaka, Law Officer, BESCO, appeared and advanced his arguments.

10. The authorised representative of the appellant Shri Delvi submitted that installation bearing R.R No N2p 3389 standing in the name of Precision Gears & Components was under disconnection and the arrears were huge and hence the appellant approached the Chief Engineer (BMAZ) who by his order dated 08.06.2005 accorded permission to pay the arrears in 4 instalments. The installations covered under this order are: 1) N2p 3389 2) N2p3724 3) N2p 2418 4) N2p 1966. The Chief Engineer in his letter which is marked as D-1 advised the AEE(EI) to reduce the load in respect of N2p 3389 from 80 HP to 66 HP so that monthly liability by way of fixed charges is reduced

11. The Authorised Representative added that the appellant made the necessary payment for reduction of the load and since there was no response from the AEE(EI), he approached him by a letter dated 24.12 .2005 requesting reduction of load which is marked as D-2. Finally nothing came out of the correspondence and on the other hand the 1st respondent slapped a demand for Rs. 2,07,093/- on the appellant.

12. Shri Vinayaka, Law Officer, BESCO, appearing for the 1st respondent submitted that the installation was disconnected in the year 2007 for non payment of arrears. Subsequently in 2013, the 1st Respondent noticed that the other installation standing in the name of the appellant bearing R.R No N2p 2418. By invoking clause 4.09 (v) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, a notice was issued to the consumer on 11.09.2013 calling for objection, if any for collecting the arrears of RR No. N2p3389 as arrears of installation bearing to R.R No. N2p 2418 belonging to the appellant. Citing the Judgement delivered by the High Court of Karnataka in the case of KEB – vs – Oriental Timber Industries, the Law Officer, BESCO, argued that claims of BESCO against the appellant is not extinguished but only barred by time and hence BESCO can recover the arrears by any other mode available and therefore, BESCO invoked clause 4.09(v) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka for recovery which does not prescribe any time limits for recovery of such amounts. Hence, question of limitation does not arise as far as recovery of arrears is concerned.

13. Having regard to the contending positions of the parties, the issue that emerges for our consideration is:

Whether the 1st Respondent has shown the arrears continuously as recoverable as arrears of charges for electricity from the date when such amount became first due in the instant case? If not, whether such claims will be valid in the eyes of law?

14. From the available records, it is seen that the appellant was sanctioned 80 HP power under LT-5 tariff schedule and assigned R.R No N2P-3389 on 3.12.1994 and further the appellant found to have paid the electricity bills up to April 2004. Further, the meter appeared to have not recorded the consumption from June 2004 to September 2006. The authorities found to have verified the meter dated 17.10.2006 and from the verification found to have noticed the meter not functioning and hence appears to have replaced the existing meter. It also appears from the records that the authorities have issued bill from June 2004 to September 2006. For the period of meter not recording, the authorities found to have billed the installation based on the average consumption of preceding three months. Since the appellant failed to pay the arrears, BESCO is found to have disconnected power supply to the installation during April 2007 and found to have stopped issuing bills from July 2007. As of the end of July 2007, the arrears stood at Rs. 2,07,093. In view of non payment of the arrears, the BESCO is found to have issued notice of termination of agreement dated 24.07.2007. When the appellant failed to pay the arrears, BESCO is found to have adjusted the security deposit of Rs.38,400/- against the arrears on 31.01.2011. Two options were available to BESCO when the appellant failed to pay up the arrears : a) File a suit for recovery after the disconnection of power supply if the consumer had only one installation b) Take steps to recover the arrears of any particular installation under disconnection as arrears of other installation belonging to the

appellant in case the appellant has more than one installation in his name or at least show the arrears in the bills of other installation continuously for a period of two years. BESCO has not done neither. Although, BESCO was aware of the existence of other installation belonging to the appellant, it has failed to recover the arrears of the installation under disconnection as arrears of other installation belonging to the appellant till 11.09.2013. Thus, it is clear that BESCO has failed to show the arrears in the bills from 2007 to 2013 almost for a period of six years. As per Section 56(2) of the Electricity Act, 2003, “... no sum due from any consumer, under this Section shall be recoverable after a period of two years from the date when such sum became first due unless sum has been shown continuously as recoverable as arrears of charge for electricity supplied ...”.

15. Further, BESCO also found to have not filed any suit in the civil court for recovery of such amount within the time limits. Under section 56(2) of Electricity Act, 2003, if the consumer neglects to pay the energy charges, the Licensee can file a suit for recovery of the arrears in the civil court after disconnecting power supply to the installation. The 1st Respondent admitted during the hearing that the arrears relating to the subject installation is not shown in the monthly bill of other installation belonging to the appellant from the year 2007 to 2013 and hence it is crystal clear that the 1st respondent has not shown the arrears from the date it became due continuously in the subsequent monthly bills of the other installation belonging to the appellant and hence as per section 56(2) of the Electricity Act, 2003, the 1st Respondent cannot claim the arrears after expiry of two years from the date when such sum became first due if it is not shown continuously in the bills for a period of two years. Hence, the following orders:

ORDER

For the foregoing reasons, the demand raised for Rs. 2,07,093/- by the 1st respondent against the appellant is set aside as time barred under Section 56(2) of the Electricity Act, 2003. In the result the appeal succeeds.



(B.R Jayaramaraje Urs)
Electricity Ombudsman

1. M/s. Preusse India (P) Ltd, 884, Kamakshipalya Extension, Bangalore-560079 (represented by its Legal Counsel Sri M.A.Delvi, Advocate, Bangalore).

1)The Assistant Executive Engineer(EI), N-6 Sub -Division, BESCO, Sunkadakatte, Bangalore – 560 091 (By Sri Vinayaka, Law Officer, BESCO)

2) 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