



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-169/2014/333

Dated 18.03.2014

Shri S.Rajashekarappa,
Shivashankar Industries,
Bangalore Road,
Challakere-577522
CHITRADURGA DISTRICT

.. **Appellant**

Vs

1. The Asst. Executive Engineer(EI)
O & M Sub Division,
BESCOM,
Challakere,
Chitradurga District.

2.The Chairperson
Consumer Grievance Redressal Forum
BESCOM,
CHITRADURGA

.. **Respondents**

1. This is an appeal under Clause 21.02 of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations,2004 against the orders passed by the Consumer Grievance Redressal Forum, BESCOM, Chitradurga (hereinafter referred to as the 2nd Respondent) vide case No. ಮುಇಂ(ಬಿ)(ಕ)/ಬೆವಿಸಂ/ಚಿವ/ಗ್ರಾಕುಂಕೊನಿವೇ/ಚಿತ್ರದುರ್ಗ/2013-14/9292-99

ದಿನಾಂಕ 21.12.2013 in regard to the back billing by the Assistant Executive Engineer (EI), O & M Sub-Division, Challakere (hereinafter referred to as the 1st Respondent) for Rs.4,97,288/- from 9/2004 to 7/2013 on account of erroneous billing. The 2nd Respondent declined to grant any relief. 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 P 157 stands in the name of the Appellant. The Appellant was sanctioned 31 H.P power under L.T-5 tariff category for running decorticate unit with Meter Constant K-10.

3. The M.T.Rating Sub-Division, Hiriur, during their routine inspection on 11.07.2013, noticed issuing erroneous billing from 9/2004 to 7/2013 on account of erroneous transfer of data to the computer which read Meter constant as 1 instead of 10. Hence, sent report accordingly to the AEE(EI) for raising back billing for Rs.4,97,288/-. The 1st Respondent, based on M.T Rating Division's report, raised back billing for the said amount and, while claiming the amount, 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. The 1st Respondent should have passed provisional assessment order and such order should have been served to the Appellant for his objection, if any, before passing final assessment order. In the present case, such procedure has not been followed and no opportunity was provided to the Appellant to file objections, if any, and, hence, raising of demand for Rs.4,97,288/- is illegal and deserves to be set aside.

4. Further, the 1st Respondent cannot claim arrears for more than two years previous to the inspection. In the present case, BESCO claimed arrears for 9 years preceding the inspection which is contrary to section 56 (2) of the Electricity Act, 2003 and, hence, prayed this authority to set aside the order passed by the 2nd Respondent and to direct the 1st Respondent to withdraw the claims.

5. The 1st Respondent's response was sought in the matter vide this office letter No.OMB/B/G-169/2014/324 dated 20.01.2014. The 1st Respondent in his response dated 12.02.2014 submitted that at the time of computerisation of ledger accounts, the meter constant of the installation under reference had been erroneously fed as K-1 instead of K-10 and, hence, resulted in this short claim. This error in billing had been noticed by the Meter Testing Division during inspection dated 11.07.2013 and immediately the 1st Respondent assessed the claims from 9/2004 to 7/2013 to the extent of Rs.4,97,288/- and communicated to the Appellant vide letter No 2188-89 date 13.08.2013.

6. 1st Respondent added that the arguments of the Appellant that the Licensee shall not recover any arrears after a period of 2 years from the date when such became first due is not applicable to the case on hand. In the instant case, the short billing became inevitable on account of wrong application of Meter Constant as K-1 instead of K-10.Recovery of short billing had been upheld by the CGRF, Chitradurga District and, hence, justified the back billing.

7. The case was taken up for hearing on 17.03.2014. On behalf of the Appellant, Shri Vishwanath, Authorised Representative, appeared and put forth his arguments and, on behalf of the 1st Respondent, Shri Nagaraj, the Assistant Executive Engineer(EI) O & M Sub-Division, Challakere, appeared and advanced his arguments.

8. Both parties reiterated the submissions made in the appeal memo and statement of objections respectively.

9.. Both parties were informed vide letter No.OMB/B/G-169/2014/331 dated 03.03.2014 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 issue that emerges for our consideration is:

While making the supplementary claims, 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 and whether failure to follow the procedure renders the demand invalid?

11. In order to answer the above question, we will have to refer to Clause 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka which stated that ***"For preferring the supplemental claims the Licensee shall serve provisional assessment order with 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"***. The 1st Respondent argued that he issued letters to the Appellants on the following dates to pay the back billing charges:

13.08.2013

12.09.2013

09.10.2013

15.10.2013

21.11.2013

12. In spite of this, the Appellant refused to pay the amount and chose to approach the 2nd Respondent. Perusal of these letters shows that the 1st Respondent has not passed any provisional assessment order based on the M.T Rating Sub-Division's report and also not provided opportunity to the Appellant to file his objections, if any, against the provisional assessment order and not passed final assessment orders after obtaining the Appellant's reply and through these letters, the 1st Respondent appears to have demanded the Appellant to pay the back billing charges. These letters do not comply with the procedure laid down under Clause 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and, hence, the demand raised for Rs.4,97,288/- cannot be accepted as valid demand for the reasons of short circuiting the procedure. However, non compliance of the procedure has not extinguished the legitimate claims of the Licensee. The 1st Respondent is at liberty to recover the back billing charges following the procedure laid down under Clause 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Hence, the following order:

ORDER

13. For the foregoing reasons, the demand raised for Rs.4,97,288/- by the 1st Respondent and the impugned order passed by the 2nd Respondent are set aside. The case is here by remanded to the 1st Respondent to pass fresh order following Clause 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

14. In the result, **the appeal partly succeeds.**


(B.R.Jayaramaraje Urs)
Electricity Ombudsman

1. Shri S.Rajashekarappa, Shivashankar Industries, Bangalore Road, Challakere-577522, Chitradurga District.
2. Chairperson, Consumer Grievance Redressal Forum, BESCO, Chitradurga.
3. The Assistant Executive Engineer (Ele), O & M Sub Division, BESCO, Challakere, Chitradurga District.
4. Shri Vinayaka.K., Law Officer, BESCO Corporate Office, 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