



D-580

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/M/G-223/2015

Dated 21st September 2015

Sri Ronald V.L colaco
House No 1 N 5411/411A,
Sankesha Cross Road No 1
Kottara, Mangalore- 575006

... Appellant

(Party in person)

V/S

1) The Assistant Executive Engineer(EI)
O&M, Mannagudda sub-Division,
Lalbagh, MESCOM, Mangalore

(Party in person)

2) The chairperson
CGRF, Dakshina Kannada District,
Office of the Superintending Engineer,
O&M Circle,Attavara,Mangalore-575001

... Respondents

1. This is an appeal under Clause 22.02 of KERC(CGRF & Ombudsman) Regulations,2004 against the orders passed by the CGRF, Dakshina Kannada District, Mangalore vide order No CGRF/15-16/Mangalore-1 SK-3/4158 dated 30.07.2015 with regard to appellant's complaint regarding back billing by MESCOM for Rs.46,907/- for alleged misuse of power in respect of his installations bearing R.R No. 8450 and R.R.No. MGL 2322.

2. In the instant case, Section Officer, MESCOM, Mannagudda Branch, Mangalore during his Level-2 inspection of two installations belonging to the appellant bearing R.R Nos. MGL 2322 and RR No. 8450 dated 23.02.2015 found rented portion being used for accommodating paying guests. Based on this, the Section officer reported to the AEE(EI) that the appellant had been misusing the power sanctioned under LT-2(a) tariff schedule for commercial purposes namely for accommodating paying guests and this misuse had taken place for a period of 8 months preceding the date of inspection which amounted to prejudicial use of power under clause 42.02 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and hence the consumer was liable to be back billed for a period of 8 months under LT-3 tariff schedule at twice the tariff applicable. Based on Section Officer's report, the AEE(EI), O & M, passed two separate assessment orders levying a penalty of Rs.46,907/- (both put together) for a period of 8 months preceding the date of inspection for unauthorised use of power at twice the tariff applicable to the purpose for which the energy is misused.

3. The appellant, during the hearing, denied his tenant was running a paying guest at his premises and argued that he had rented out a portion

of the house to one Jose Joseph by entering into a rental agreement and he had no objection if his tenant's guests stayed in the rented out portion. Further, MESCOM staff raided the rented out portion of the house and made his tenant sign a report without his knowledge and his tenant hid the report from him. The appellant, further alleged that MESCOM is trying to convince by irrelevant photographs of stored cots and furniture by his tenant and maintained that empty cots stored in a house with other furniture are no proof that the premises is used to accommodate the paying guest and even if the premises is used for housing the paying guests it does not amount to misuse of power and hence he is not liable to pay the penalty and therefore the impugned order is liable to be set aside.

4. The appellant further faulted MESCOM for not giving opportunity before passing final assessment orders.

5. The 1st respondent argued that the appellant who had been sanctioned power under LT-2(a) tariff schedule had been misusing such power for running paying guest which falls under LT-3 tariff schedule and attracts Regulation 42.02 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka which states that *“if at any time, the energy supplied under one method of charging is misused for purposes for which a higher method of charging is in force, the assessing Officer shall assess the quantum of energy and difference in fixed charges for the entire period during which such unauthorised use of electricity has taken place and if however, the period during which such unauthorised 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 the energy is used” and hence the levy of penalty is justified and therefore the appeal is liable to be dismissed.

6. From the arguments of both parties, the issue that emerges for our consideration is “Whether back billing is as per law”?

7. It is evident from the arguments of the parties and the records made available to this Authority that the appellant is not taking any responsibility for proper use of power in consonance with the Agreement he entered into with MESCOM. Appellant admits his tenant was using the rented portion as paying guest accommodation but says such use is permitted under LT-2(a) tariff and that tariff allows the owner of the house to use portion of his residential house for running paying guest and hence such use of power does not amount to misuse of power. As per the agreement, the appellant is supposed to use power sanctioned under LT-2(a) tariff for domestic purposes only and if the appellant has tenanted a portion of his house, then he has to ensure that tenant used power for domestic purposes only under LT-2(a) tariff and not for any other purposes.

8. In the present case, MESCOM during their inspection of the appellant's installation found portion of the premises being rented out to one Jose Joseph, who in turn had converted the rented out portion into temporary rooms and had used as paying guest accommodation. Further, inspection staff also found more than 20 cots and lot of furniture stored in the rented portion which prima facie establish that the appellant's so called tenant was not using the rented portion for his family use, but for accommodating the paying guests. Further, the appellant's statement that

he is not responsible if his tenant used the rented premises for paying guest is legally unacceptable as the tenant is bound to honour the rental agreement he entered into with the landlord. Tenant, after taking the house for personal and family use is found to have used it for running paying guest, which not only amounts to breach of trust, but also breach of agreement that he entered into with the landlord. Since the appellant is the consumer of MESCOM, he becomes liable to pay the penalty for the tenant's misuse of power. In the instant case, the tenant, though found using the rented premises for paying guest, the land lord is seen to have turned a blind eye to tenant's such misuse of power and not acting legally against him certainly amounts to breach of agreement he entered into with MESCOM. This clearly proves that the appellant is hand in glove with the tenant and hence his argument that he is not liable to pay the penalty is unacceptable and liable to be rejected.

9. The appellant's argument that even if his tenant has used the rented portion for running paying guest does not amount to misuse of power as LT-2(a) tariff provides the owner of the building to use portion of the residential building for paying guest is not acceptable as in the instant case the land lord/appellant has not directly used his premises for running paying guest but allowed the tenant to use rented out portion exclusively for running paying guest. From the rental agreement it can be seen that the landlord has reserved rights to keep his belongings in one portion of his house and also have free access to such belongings whenever he visited. This clearly shows that the landlord was not staying in the premises but only kept his belongings allowing the tenant to use the remaining rented portion exclusively for paying guest purposes. Such use definitely falls

under LT-3 tariff schedule and attracts Clause 42.02 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka i.e. prejudicial use of power warranting levy of penalty for the period for which misuse has taken place. In the present case, the misuse is found to have taken place for a period of 8 months preceding inspection and hence back billing for 8 months at twice the tariff is found to be in line with Regulation 42.02(a) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka not warranting any interference in the impugned orders passed by the CGRF.

10. Lastly, the appellant's argument that he has not been given sufficient opportunity to explain his side of the case before AEE (EI) is not borne out by the facts. This charge seems to be unfounded as the appellant himself appeared before the AEE (EI) and filed written objections and also copy of the rental agreement. Hence, this argument is rejected as devoid of merit. Therefore, the following order.

ORDER

For the foregoing reasons, the appeal is dismissed as not maintainable.



(B.R Jayaramaraje Urs)
Electricity Ombudsman

To :

1. Sri Ronald V.L Colaco, House No 1 N 5411/411A, Sankesha Cross Road No. 1, Kottara, Mangalore- 575006

2. The Assistant Executive Engineer(EI), O&M, Mannagudda sub-Division, Lalbagh, MESCOM, Mangalore
3. The chairperson, CGRF, Dakshina Kannada District, Office of the Superintending Engineer, O&M Circle,Attavara,Mangalore-575001
4. Managing Directors of ESCOMs.
5. PS to Hon. Chairman, KERC
6. PS to Hon'ble Member (A), KERC
7. PS to Hon'ble Member (M), KERC
8. Secretary, KERC