



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-172/2014/364

Dated 30.05.2014

1.SLK Global BPO Services P.Limited,
Aishwarya Towers,
No.525, 2nd Main, Sampige Road,
Malleshwaram,
BANGALORE-560003

2. Bharath and Sharath Enterprises,
No.283, 4th Cross, II Block,
RMV II Stage,
BANGALORE-560094
(Represented by Sri Shridhar Prabhu,
Advocate - Authorised Representative)

.. Appellants

Vs

1. The Asst. Executive Engineer(EI)
O & M C-6 Sub Division,
BESCOM,
Mathikere,
Bangalore-560054
(Represented by Shri Vinayaka,
Law Officer, BESCOM)

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, BESCOM, Bangalore Urban District (herein after referred to as the 2nd Respondent) vide Case No 226/2013-14 dated 19.03.2014 relating to the claims raised for Rs 16,86,303/ dated 30.04.2013 by the Assistant Executive Engineer (EI), C-6 Sub-Division, BESCOM, Mathikere, Bangalore-560054 (hereinafter referred to as the 1st Respondent). 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 2nd Appellant is an Electricity consumer of BESCOM and the owner of a premises. The 1st Appellant is the present occupier of the premises and, hence, the consumer of BESCOM. He is assigned with R.R No C6HT6. The premises bearing No 55-58, MGBS Complex, 80Ft Road, opposite MSR Medical College, Bangalore-560094 was originally occupied by SLK Software Services Private Ltd ("SLK Software"), an erstwhile consumer of BESCOM. This company was engaged in the business of information technology/software development and the official memorandum issued to this effect stated that SLK Software was serviced under HT-2(a) tariff. On 18.4.2012, the premise was vacated by SLK Software and, after vacating the premise, SLK Software wrote a letter to the 1st Respondent informing his vacation of the premises.

3. After SLK Software vacating the premises, the 1st Appellant occupied the premises from June 2012. Subsequently, on 06.12.2012, the premises was

inspected by the 1st Respondent and, during the inspection, the 1st Appellant was asked to change the tariff from HT-2(a) to HT-2(b).

4. Further, the Assistant General Manager, C-6 Sub-Division, BESCO, Mathikere, Bangalore issued a back billing demand for Rs.18,69,410/-. The 1st Appellant raised certain objections regarding this demand on 22.03.2013. The 1st Respondent, after considering the objections, issued a revised back billing demand for Rs.16,86,303/- on 30.04.2013.

5. Aggrieved by this revised back billing demand, the 1st Appellant filed a complaint before the 2nd Respondent and the 2nd Respondent, after hearing the Appellant, passed an order dismissing the complaint on the ground that the case pertained to misuse of tariff and, hence, it did not get jurisdiction.

6. The Hon'ble High Court of Karnataka, in the case of Hinduja Global Solutions Limited V/S KERC & others in WP 35620-35621/2010, has clearly held that even BPOs (Business Process Outsourcing) are eligible for HT-2(a) tariff. In view of this judgement, the 1st Appellant is not required to change the tariff from HT-2(a) to HT-2(b).

7. The 1st Respondent was notified of the vacation of the premises by SLK Software and the 1st Respondent was duty bound to change the tariff from April 2012 onwards. In spite of 1st Respondent having knowledge of SLK Software vacating the premises, he has failed to change the tariff from HT-2(a) to HT-2(b) immediately after such vacation and allowed the 1st Appellant to use power under HT-2(a) tariff till December 2013. The 1st Appellant has not concealed any fact from BESCO and, on the other hand, the earlier occupant had informed regarding vacation of the building and, hence, the question of misuse of tariff does not arise and, accordingly, the 1st Appellant does not come under Section 126 of The Electricity Act, 2003 and levy of penalty at two times the normal tariff is unjust and, hence, deserved to be quashed.

8. The 1st Respondent comments were called vide letter No OMB/B/G-172/2014/345 dated 22.04.2014. The 1st Respondent filed his statement of objections vide letter No AEE/C.O&M/C6/AET/AAO/282 dated 06.05.2014.

9. The 1st Respondent, in his statement of objections, submitted that the installation bearing R.R No C6HT-4 was serviced on 04.06.2004 in the name of Bharath & Sharath Enterprises under HT-2(b) tariff. Subsequently, BESCO converted the tariff from HT-2(b) to HT-2(a) in favour of SLK Software, the occupant on 15.04.2011 on production of IT & BT certificate and that occupant vacated the premises on 12.04.2012 and, after vacating the premises, the Company informed regarding the vacation of the premises on 18.04.2012. However, the 1st Appellant did not take any steps to submit application, pay necessary charges for conversion of tariff and execute fresh agreement as per Clause 30 and 39 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

10. He further added that the premises was inspected on 06.12.2012 and, during the inspection. it was noticed that the 1st Appellant was using the premises for BPO purposes and for commercial purposes and, after the inspection, the 2nd Appellant submitted an application for change of tariff category from HT-2(a) to HT-2(b). During the inspection, the 1st Respondent observed that the Appellant had misused HT-2(a) tariff earlier extended to his predecessor. Hence, back billing charges were raised under Clause 42.02 of KERC (CGRF & Ombudsman) Regulations, 2004. The 2nd Respondent, in its impugned order, held that it had no jurisdiction to deal with matter relating to unauthorised use of electricity as provided under Section 126 of the Electricity Act, 2003 and also under Clause 2(g) of KERC (CGRF & Ombudsman Regulations, 2004. Section 126 of The Electricity Act, 2003 and Clause 2(g) of KERC(CGRF & Ombudsman) Regulations, 2004 are equally applicable to the Ombudsman and, hence, prayed this Authority to dismiss the appeal as it does not get jurisdiction.

11. The case was taken up for hearing on 21.05.2014. On behalf of the Appellants, Sri Shridhar Prabhu, Advocate appeared and, on behalf of the 1st Respondent, Shri Vinayaka, Law officer, BESCO appeared. Finally, case was heard on 29.05.2014. During the hearing both parties reiterated the submissions made in the appeal memo and statement of objections respectively.

12. Both parties were informed vide letter No.OMB/B/G-172/2014/353 dated 08.05.2014 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.

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

a) Whether the instant case falls under Section 126 of the Electricity Act, 2003 & whether CGRF is right in dismissing the complaint on the ground that it did not get jurisdiction to deal with the subject?

14. In order to answer the above said question, we have to see the inspection report of the 1st Respondent and back billing demand raised in pursuant to such inspection. The inspection report dated 06.02.2012 stated that ***"the above installation bill issuing under HT-2(a) tariff since the consumer was using for SLK Software purpose. But when i came for reading on 01.12.12, it is found that the board is displayed as "SLK Global BPO Services Private Limited" which is not covered under HT-2(a) tariff i.e Industrial tariff. The consumer is also not submitted any letter in this regard.***

Hence, action may be taken as per KERC regulations and requested the consumer to change the industrial tariff/commercial tariff by observing BESCO formalities."

15. The Advocate for the Appellant argued that the earlier occupant, namely, SLK Software, after vacating the premises on 12.04.2012, informed the 1st Respondent regarding the vacation of the premises and, hence, there was no concealment of facts by the Appellants and, hence, the Appellants are not liable to pay the penalty at twice the normal tariff under Clause 42.02 of KERC (CGRF and Ombudsman) Regulations, 2004. This argument has no merit because the 2nd Appellant who is also the owner of the premises knew that the earlier occupant had availed HT-2(a) tariff by producing IT & BT certificate and the 1st Appellant, who occupied the premises subsequently, did not have such certificate but still he allowed the new occupant to avail power under HT-2(a) tariff without getting tariff change order to HT-2(b). This definitely amounts to suppression of facts. Similarly, the new occupant who was not eligible for HT-2(a) tariff failed to bring the facts to the notice of Distribution Licensee for 6 months nor applied for change of tariff category from HT-2(a) to HT-2(b) until the 1st Respondent noticed this discrepancy during his inspection. This action of the Appellants are in violation of Clause 42.02(a) which stated 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 the 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 misused"***. Examined in the light of this, definitely the Appellants are found to be guilty of suppressing the facts and misuse of the tariff.

16. The Advocate for the Appellant vehemently argued that the Distribution Licensee is equally culpable as they failed to act immediately on the vacation letter issued by the earlier occupant. It is true that the officials of the Licensee, failed to take action on the letter forwarded by the earlier occupant regarding the vacation of the premises and fix the correct tariff on the new occupant but that does not mean that the Appellants can use HT-2 (a) tariff surreptitiously without bringing changes to the notice of the Distribution Licensee for almost 6 months. This would have continued but for the inspection. If this went undetected for an indefinite period and if period of misuse became unascertainable, the Distribution Licensee would end up collecting penalty at twice the normal tariff for a period of 12 months only without regard whether such misuse extended to 1 year or more than 1 year. It is seen that the 1st Respondent has detected this misuse of tariff during his routine inspection within 6 months of such misuse of tariff and issued back billing demand.

17. In the light of the above discussion, this authority does not see any flaw in the impugned orders warranting intervention. Hence, the following orders:

ORDER

18. For the foregoing reasons, the impugned order passed by the second Respondent is hereby upheld. The Appellants are at liberty to approach the Appellate Authority under Clause 44 of the KERC (CGRF and Ombudsman) Regulations, 2004 if they are aggrieved by the levy of penalty under Clause 42.02 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Consequently, ***the appeal fails.***



(B.R. Jayaramaraje Urs)
Electricity Ombudsman

1. M/s.SLK Global BPO Services P.Ltd., Aishwarya Towers, 525, 2nd Main, Sampige Road, Malleshwaram, Bangalore-560003 & Bharath and Sharath Enterprises NO.283, 4th Cross, II Block, RMV II Stage, Bangalore-560094 (represented by their Legal Counsel, Sri Shridhar Prabhu, Bangalore).
2. Chairperson, Consumer Grievance Redressal Forum, Bangalore Urban District, Basaveshwarnagar, Bangalore.
3. The Assistant Executive Engineer (Ele), O & M C-6 Sub Division, BESCO, Mathikere, Bangalore-560054.
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