



# Before the Electricity Ombudsman

9/2, 6<sup>th</sup> Floor, Mahalakshmi Chambers, M.G.Road,  
Bangalore

Present: B.R.Jayaramaraje Urs, IAS (Retd.)

Electricity Ombudsman

Case No.OMB/B/G-173/2014/365

Dated 30.05.2014

M/s.Triveni Turbines Limited,  
#12, Peenya Industrial Area,  
**BANGALORE-560058**  
(Represented by Sri M.A.Delvi,  
Authorised Representative)

.. Appellant

**Vs**

1. The Asst. Executive Engineer(EI)  
O & M N-5 Sub Division,  
BESCOM,  
SRS Gate, Peenya,  
**BANGALORE**

2. The Chairperson  
Consumer Grievance Redressal Forum  
Office of the Superintending Engineer,  
BESCOM, West Circle,  
05, 3<sup>rd</sup> 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 (hereinafter referred to as the 2<sup>nd</sup> Respondent) vide No CGRF/240/2013-2014 dated 29.03.2014 relating to the claims raised for Rs.10,31,327/- dated 4.10.2012 by the Assistant Executive Engineer (EI), O & M N-5 Sub-division, BESCOM, SRS Gate, Peenya, Bangalore (hereinafter referred to as the 1<sup>st</sup> Respondent). The 2<sup>nd</sup> Respondent declined to grant any relief to the Appellant in the matter. Aggrieved by the order passed by the 2<sup>nd</sup> Respondent, the Appellant has submitted his case as under:

2. The Appellant is an electricity consumer of BESCOM bearing R.R No N4HT-35. The Appellant industry was sanctioned 1000 KVA power under HT2 (a) tariff. KERC Tariff Order-2013 at Sl.No. 5 under the caption "conditions applicable to HT installations and billing" states that ***"energy supplied may be utilised for all purposes associated with the working of the installation, such as office stores, canteens, yards, water supply and advertisements within the premises"***.

The Appellant industry which is engaged in turbine manufacturing activities has 500 workers on its payroll besides some on contract basis. These workers represented to the management to arrange to set up an ATM in the factory premises as they were having difficulty in encashing their pay cheques.

3. To address the workers' grievance, several banks were approached, but no bank came forward to set up ATM because of non-viability factor. Finally, the Axis Bank agreed to put up an ATM provided all facilities were extended free of cost to them. The Appellant industry agreed to the conditions and the ATM started functioning since the year 2005. This was set up within the factory premises. There is hardly any habitation or business establishments around the place. This ATM was set up for the convenience of the workers with the knowledge of the 1<sup>st</sup> Respondent and its respective wings. Inspection Wing of BESCOM has been visiting the premises

regularly and the existence of ATM could not have escaped its attention as there is a board on it.

4. The Assistant Executive Engineer(EI) O & M, Peenya Sub-Division, BESCO, Bangalore, after inspecting the ATM, made a report dated 27.01.2012 that power to an extent of 4.522 KW was found being used to operate the ATM and, hence the Appellant industry should be back billed for Rs.1,75,739/-. Based on this report, the 1<sup>st</sup> Respondent raised back billing demand on 29.02.2012. The Appellant industry made Representations to BESCO on 13.03.2012 and 19.03.2012 to withdraw the Back Billing Demand but to no avail.

5. Further, not satisfied with the inspection dated 27.01.2012, the 1<sup>st</sup> Respondent arranged for an inspection by the vigilance on 04.09.2012 in which the Inspecting Officer made the following remarks ***"Separate meter to be availed for Axis ATM, since the ATM is being accessed by both employees of TTL as well as the general public."***

6. The 1<sup>st</sup> Respondent, based on this report, caused another back bill dated 04.10.2012 demanding a sum of Rs.10, 31,327/-. Aggrieved by this incorrect claim, the Appellant industry filed objections stating that ATM had been set up for the benefit of the employees with the knowledge of the 1<sup>st</sup> Respondent and, hence, this did not fall under Section 126 of the Electricity Act, 2003. Besides, as per Regulation 42.02 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, there cannot be a back bill as it does not amount to prejudicial use of power. The 1<sup>st</sup> Respondent, without considering any of these objections, raised the back bill on 13.06.2013. In the back bill, it was suggested to make an appeal before the appropriate Appellate Authority. Since the matter was not coming under Section 126 of the Electricity Act, 2003, the Appellant filed a complaint before the 2<sup>nd</sup> Respondent on 29.06.2013. The 2<sup>nd</sup> Respondent, after considering the matter, passed the impugned order advising the Appellant to approach the Appellate Authority under Clause 44 of Conditions of Supply of Electricity of Distribution

Licenseses in the State of Karnataka as it did not get jurisdiction under Clause 2(g) of KERC (CGRF and Ombudsman) Regulations, 2004. The 2<sup>nd</sup> Respondent has wrongly come to the conclusion that the instant case attracts Section 126 of the Electricity Act, 2003. Hence, prayed this Authority to set aside the impugned order and to remand the case to CGRF to assume jurisdiction and to pass fresh orders on merits.

7. The 1<sup>st</sup> Respondent's comments were called vide letter No OMB/B/G-173/2014/346 dated 23.04.2014. The 1<sup>st</sup> Respondent in his statement of objections submitted that the installation had been installed on 05.04.1974 and, on 27.01.2012, the staff of 1<sup>st</sup> Respondent inspected the premises of the Appellant Industry and discovered that the Appellant Industry had set up an ATM and had drawn 4.522 kW power from its installation to the ATM in an unauthorized manner which amounted to misuse of HT-2(a) tariff. Based on this, back bill demand had been raised for Rs.1,03,226/- with an advice to the Appellant Industry to stop the commercial activity or to get such activity regularised. In response to this notice, the Appellant had paid Rs.1,03,226/- on 13.07.2012, but the Appellant neither stopped the activity nor got the activity regularised.

8. Further, the Vigilance Squad inspected the Appellant's installation on 04.09.2012 and noticed that the Appellant had misused tariff from June 2005 to September 2012 and, based on this inspection, back bill charges had been raised for Rs.10,31,327/-. Before passing the final assessment orders, a notice had been issued to the Appellant Industry calling for objection, if any. In response to the notice, the Appellant Industry filed objections stating that the Axis Bank had extended the ATM facilities only to its employees. This objection had not been accepted as the Appellant Industry had extended this facility to the general public and held such diversion of electricity to ATM from the installation amounted to misuse of tariff and final assessment order had been passed on 28.11.2012. Aggrieved by this order, the Appellant Industry filed a complaint before the 2<sup>nd</sup> Respondent. The 2<sup>nd</sup> Respondent, after hearing the parties, passed order that the Appellant had failed to establish that it had not misused the tariff.

9. The 1<sup>st</sup> Respondent further added that actions like setting up ATM on the outer limits of the factory premises facing the road and making the facilities available to the public amounted to commercial activity. Just because the inspecting officers had not noticed the activity, did not mean that banking activities had not taken place from the year 2005. Besides, the Appellant Industry had not produced any proof that public had not used the ATM facility. In view of the above, the 1<sup>st</sup> Respondent prayed this Authority not to consider the complaint of the Appellant Industry and to confirm the order passed by the 2<sup>nd</sup> Respondent.

10. Both parties were informed vide letter No.OMB/B/G-173/2014/352 dated 06.05.2014 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.

11. 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 and sub-sections (1)(2)(3)(4)(5) & (6) of the Electricity Act,2003 & whether the 2<sup>nd</sup> Respondent is right in dismissing the complaint on the grounds of lack of jurisdiction?***

12. A Perusal of the documents reveals that the Appellant Industry has arranged to establish an ATM by AXIS Bank in the factory premises. The Appellant Industry has argued that the ATM facility has been extended only to its employees and, that too, to enable the employees to realise their salary cheques next door without much inconvenience. Further, the documents reveal that the Appellant Industry was sanctioned 1000 KVA power in the year 1974 under HT-2(a) tariff. This tariff is usually extended to industries. The Appellant Industry got the ATM set up with the

initiative of Axis Bank in the year 2005. The Appellant Industry has allowed 4.522 kW power to be drawn from its installation for running the ATM from the year 2005 to 2012.

13. The argument of the Appellant industry that power can be utilised for all purposes associated with the working of the installation does not mean that power can be utilised for the purposes not associated with the working of the installation. Associated with the working of the installation means connected with the working of the installation. Office, stores, canteen, yard lighting, water supply and advertisement within the premises are all connected with the working of the installation. These services contribute to the working of the installation and, hence, KEREC Tariff Order has permitted use of power for such activities within the premises. If ATM were set up within the factory premises and made accessible only to the factory employees, then it could have been said that it is in association with the working of the installation. In the instant case, ATM is not exactly located within the factory premises. It is set up on the outer limits of the factory premises facing public road.

14. Secondly, ATM facilities are found to have been extended to the public. There is a cost for such service. There is an element of commerciality in the transaction. Such commercial activities cannot be termed associated with the working of the installation. Such commercial activities come under L.T-3 tariff and the Appellant Industry and the concerned Bank ought to have sought electricity under that tariff. In the present case, power meant for industry is found to have been used for commercial purposes which amounts to prejudicial use of power under Section 126 (b) (iv) of the Electricity Act, 2003 and Clause of 42.02 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

15. Section 126 of the Electricity Act, 2003 states that **"If on an inspection of any place or premises or after inspection of the equipment, machines devices found connected or used, or after inspection of records maintained**

**by any person, the assessing officer comes to the conclusion that such person is indulging in authorised use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefitted by such use".** As per this Section, the Appellant is not only found to have indulged in unauthorised use of power but also allowed someone to benefit by such use. In the present case, the ATM was allowed to be used by the public and the bank for commercial purposes. Section 126 (5) the Electricity Act, 2003 says that "***If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made 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 twelve months immediately preceding the date of inspection.***" In the instant case, the staff of the 1<sup>st</sup> Respondent noticed the unauthorised use of power for the first time on 27.01.2012 and, on the ground of unascertainability of period of misuse, it levied penalty at twice the normal tariff for a period of one year. Subsequently, Vigilance Squad inspected the installation on 29.02.2012 and ascertained from the bank that ATM had been set up in the year 2005 and, based on the information, the Vigilance Squad recommended to levy penalty at twice the normal tariff for the entire period during which such unauthorised use of electricity has taken place. The action of the Vigilance Squad and resultant back billing appear to be fully in conformity with Section 126 (1) & (5) of the Electricity Act, 2003.

16. In the light of the above discussions, this Authority does not see any reason to interfere in the order passed by the 2<sup>nd</sup> Respondent as it has correctly held that in matters of unauthorised use of electricity as provided under Section 126 of the Electricity Act, 2003 and Clause 2(g) of KERC (CGRF and Ombudsman) Regulations, 2004, it has no jurisdiction.

17. In view of the above, the following order is passed:

## ***ORDER***

18. For the foregoing reasons, the appeal is dismissed. However, the Appellant industry is at liberty to approach the competent Appellant Authority under Clause 44 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka if it is aggrieved by the back billing. Consequently, **the appeal fails.**



(B.R.Jayaramaraje Urs)  
Electricity Ombudsman

1. M/s.Triveni Turbines Limited, #12, Peenya Industrial Area, Bangalore-560058 (represented by its Authorised Representative, Sri. M.A.Delvi, Bangalore).
2. Chairperson, Consumer Grievance Redressal Forum, Bangalore Urban District, Basaveshwarnagar, Bangalore.
3. The Assistant Executive Engineer (Ele), O & M N-5 Sub Division, BESCO, SRS Gate, Peenya, Bangalore
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



