



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-186/2014/403

Dated 22.08.2014

Shri V.Puttaraju,
No.46, Chologalli,
Dattatreya Temple Road, Cubbonpet
BANGALORE-560002
(R.R.No.EH 4326)

**(Represented by Sri G.B.Revanaradhya,
Authorised Representative)**

.. **Appellant**

Vs

1. The Asst. Executive Engineer(EI)
O & M W-5 Sub Division,
BESCOM,
Krishi Bhavan, Hudson Circle,
BANGALORE-2

2. 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, BESCO, Bangalore Urban (hereinafter referred to as the 2nd Respondent) vide case No CGRF/10/2013-14/19.12.2013 dated 28.05.2014 relating to raising of back billing by the 1st Respondent for Rs 27,486/ in respect of Installation bearing No.W5 EH 4326. Aggrieved by the order passed by the 2nd Respondent, the Appellant has submitted his case as under:

2. The Appellant is a registered electricity consumer of BESCO and installation bearing RR No.W5 EH 4326 stands in the name of the Appellant. The installation was serviced under LT-2(a) tariff schedule on 01.04.1992. The Appellant has rented out a portion of his house wherein the tenant is engaged in gold smithy work on piecework basis against the orders. The tenant is not engaged in any commercial activity in the premises. However, L.T Rating Sub-division which inspected the subject installation on 17.09.2012 made an observation that the Appellant's tenant had been using the premises for commercial purposes which amounted to misuse of tariff and, hence, the registered electricity consumer was to be levied a penalty at twice the applicable tariff for a period of 12 months preceding the date of inspection for the quantum of power misused and also difference in fixed charges which totalled up to Rs.27,486/-. Based on this report, the 1st Respondent raised a back billing against the Appellant for Rs.27,486/- on 13.09.2013. The Appellant filed objections against the back billing which were not considered by the 1st Respondent. However, he was advised to file a complaint before the 2nd Respondent if aggrieved by the decision. The Appellant filed a complaint before the 2nd Respondent. Though all the three 2nd Respondent members were present and had heard the complaint, the final order bore the signature of only two members and the Chairman, 2nd Respondent has not assigned any reasons why the third Member, though participated in the proceedings, had not signed the final order. If the member had demitted the office before the final order was passed and then this fact could have been brought on record by the Chairman and, hence, failure to record the reasons amounts to vitiation of the proceedings and, hence, the impugned order is liable to be set aside.

3. Further, the L.T Rating Sub- Division conducted inspection of the Appellant's installation on 17.09.2012 and raised a back billing on 13.09.2013 after a lapse of more than a year. It is a fact that the Appellant's tenant is using the residential premises both for domestic purpose and for doing job work in gold smithy and, thus, initial categorising of the Appellant under the LT-2(a) category was appropriate and conversion to LT-3 was inappropriate as the tenant is not using the electricity for commercial purposes and, hence, back billing demand issued by the 1st Respondent is liable to be set aside. Hence, prayed this Authority to set aside the impugned order passed by the 2nd Respondent and to issue directions to the 1st Respondent to withdraw the back billing demand raised for Rs.27,486/-.

4. The Respondent's comments were called vide letter No OMB/B/G-186/2014/378 dated 26.06.2014.

5. The 1st Respondent in his statement of objections submitted that initially the subject installation had been serviced under LT-2(a) Tariff Schedule, i.e. domestic purposes and, later on 17.09.2012, the Junior Engineer, L.T Rating Sub-Division inspected the premises of the Appellant and found the Appellant not occupying any portion of the house for domestic purposes, but was using the entire premises for carrying out gold shaping and repair work on job basis and, thus, misused the LT-2(a) tariff. Even L.T Rating Sub-Division found the Appellant not obtaining general license from the concerned local authority to carry out such activities. Based on this report and also in pursuance of the directions issued by the Executive Engineer(EI), Vidhana Soudha Division to treat such installations under LT-3 category, the Appellant had been considered under LT-3 Tariff Schedule and back billed for Rs.27,486/- vide letter No 2496-97 dated 13.09.2013. The 1st Respondent had been corresponding with the Executive Engineer, Vidhana Soudha Division regarding the category under which gold shaping and repair work carried out by gold smiths using their entire residential houses for such activity had to be considered and this had taken one year and, in the meantime, the Appellant himself sought change of tariff

category from LT-2(a) to LT-3. Accordingly, tariff had been changed from LT-2(a) to LT-3. Back billing had been done following regulation 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. This back billing had been challenged by the Appellant before the 2nd Respondent and the 2nd Respondent, after hearing both parties, dismissed the complaint saying that it had no jurisdiction to deal with cases falling under Section 126 of The Electricity Act, however, the Appellant could file appeal before the Appellate Authority under Clause 44 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka if he was aggrieved by the back billing. Hence, the 1st Respondent prayed this Authority to dismiss the appeal confirming the order passed by the 2nd Respondent.

6. The case was taken up for hearing on 07.08.2014. On behalf of the Appellant, Shri G.B.Revanaradhya, Authorised Representative appeared and put forth his arguments. On behalf of the 1st Respondent, Shri Vinayaka, Law Officer, BESCOM appeared and advanced his arguments. During the hearing, both the Authorised Representative of the Appellant and the Law Officer BESCOM, who appeared for the 1st respondent, reiterated the submissions made in the appeal memo and the statement of objections respectively.

7. Both parties were informed vide letter No.OMB/B/G-186/2014/392 dated 21.07.2014 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.

8. Having regard to the contending positions of the parties, the issues that arise for our consideration are:

a) Whether the Appellant has misused power as alleged by the 1st Respondent?

b) Whether the back billing issued against the Appellant for Rs.27,486/- is justified?

9. In order to answer the above questions, we will have to refer to tariff order issued by KERC to find out whether the Appellant has got eligibility to be considered under LT-2(a) Tariff Schedule. The Tariff Schedule LT-2(a) states that **"Tariff Schedule LT-2 (a) applicable to lighting, heating and motive power installation of residential houses and also to such houses where a portion is used by the occupant for-- (g) Gold smithy using motors up to 200 watts"**. Perusal of the records reveals that the Appellant was initially sanctioned 3.00 kW power under LT-2(a) Tariff Schedule and, subsequently, the LT Rating Division, during their routine inspection on 17.09.2012, noticed the Appellant letting out the entire residential house and the tenant using the entire premises for gold shaping and repair job work and not occupying any portion of the house for residential purposes which amounted to misuse of power. Further, LT Rating Sub division is found to have written to the 1st Respondent to levy penalty at twice the tariff applicable for a period of 12 months immediately preceding date of inspection on the grounds of misuse of power which appears to be in conformity with Clause 42.02 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

10. Further, the 1st Respondent, based on LT Rating Sub-Division's report, appeared to have back billed at twice the applicable tariff for a period of 12 months immediately preceding the date of inspection which also appear to be in accordance with 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 purpose 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 purposes for which the energy is misused”.

11. The 2nd Respondent’s order dismissing the complaint on the grounds of lack of jurisdiction is as per 2(g) of KERC (CGRF & Ombudsman) Regulations, 2004.

12. The Appellant has raised a point in his appeal memo that one of the 2nd Respondent’s Members, though participated in the proceedings of the case, has not attested his signature to the final order and the Chairman has not recorded the reasons for the Member not attesting the signature and, therefore, the proceedings are vitiated and, hence, the impugned order passed on the basis of flawed proceedings is liable to be set aside. In the present case, it appears that the nominated member heard the case initially and demitted the office after the completion of his tenure before the final order could be passed. Subsequently, the remaining two members who constituted the quorum continued with the business and, after hearing the entire matter, passed the final order. Under KERC (CGRF & Ombudsman) Regulation 8.02 ***“The proceedings of the Forum shall be conducted by the Chairperson of the Forum in the presence of the Members, the quorum being two”*** and, hence, Members are entitled to proceed with the case and pass final order and, as such, the argument of the Appellant that the proceedings conducted by the CGRF in the present case are vitiated cannot be accepted and, hence, rejected. Therefore, the following order:

ORDER

13. For the foregoing reasons, the **appeal is dismissed**. However, the Appellant is at liberty to approach the Appellate Authority under Clause 44 of Conditions of

Supply of Electricity of Distribution Licensees in the State of Karnataka if he is aggrieved by the assessment order passed by the 1st Respondent.



(B.R. Jayaramaraje Urs)
Electricity Ombudsman

1. Shri V. Puttaraju, No.46, Chola Galli, Dattatreya Temple Road, Cubbonpet, Bangalore-560058 (represented by its Authorised Representative, Sri.G.B.Revanaradhya, Bangalore).
2. Chairperson, Consumer Grievance Redressal Forum, Bangalore Urban District, Basaveshwarnagar, Bangalore.
3. The Assistant Executive Engineer (Ele), O & M W-5 Sub Division, BESCO, Krishi Bhavana, Hudson Circle, 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