



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-150/2013/326

Dated 13.02.2014

M/s.Vijayaa Steels Limited,
No.37, Peenya Industrial Estate,

BANGALORE

**(Represented by M/s. Shridhar Prabhu Associates,
Advocates - Authorised Representatives)**

.. Appellant

Vs

1. The Asst. Executive Engineer(EI)

O & M Sub Division,

BESCOM,

KUNIGAL

**(Represented by Shri Vinayaka ,
Law Officer, BESCOM)**

The Chairperson

Consumer Grievance Redressal Forum

BESCOM,

BANGALORE

.. Respondents

1. This appeal under Clause 21.02 of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004 is directed against the order passed by the Consumer Grievance Redressal Forum, BESCOM, Bangalore (herein after referred to as the 2nd Respondent) vide case No CGRF/186/2012/2432-37 dated

27.04.2013 in regard to the short claims raised by the Assistant Executive Engineer(EI), BESCO, Kunigal (hereinafter referred to as the 1st Respondent) for Rs.1,04,79,225/- on account of erroneous reading of the TOD (Time of Day) Meter. 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 KEHT stands in the name of the Appellant. The Appellant was sanctioned 10,000 KVA power under HT2 (a) tariff and the installation was serviced on 03.02.2007. The Appellant has been availing TOD (Time of Day) facilities since October, 2010 and paying the energy bills regularly. All of a sudden, based on the audit observation, BESCO raised short claims for Rs.95,70,041/- vide letter dated 26.07.2012. The audit wing of BESCO, during docket verification of the Appellant, had observed that the bills issued previously by the 1st Respondent based on consumption recorded in TOD meter based on time zones like BO, B1 & B2 had been incorrect and BESCO should take the consumption recorded in the KWH meter. The Appellant disputed this liability on 06.08.2012. However, the 1st Respondent issued two letters dated 14.08.2012 and 22.08.2012 claiming Rs.95,70,041/- and Rs.1,04,79,225/- respectively and further an amount of Rs.41,43,155/- paid as Security Deposit would be adjusted against the arrears and the balance amount of Rs.63,36,070/- was to be paid by the Appellant within 15 days. The Appellant filed a complaint challenging the demand before the 2nd Respondent and the 2nd Respondent allowed the complaint on 10.10.2012. In pursuance to the 2nd Respondent's order, the 1st Respondent, issued a letter to the Appellant along with final bill for Rs.1,04,79,225/- dated 16.10.2012 and also invited the Appellant to attend a meeting to be held on 18.10.2012 in the presence of the Sub-Division officials of BESCO. The Appellant could not attend the meeting on account of short notice and this was conveyed to the concerned. However, the officials of BESCO visited the premises of the Appellant without any notice on 19.10.2012 and, after a brief discussion with the Appellant's official, obtained the signature on

the proceedings which was in Kannada language which was not known to the official saying that it was just a formality.

3. Subsequently, the Appellant received a letter from the 1st Respondent dated 19.10.2012 stating that it had been assumed that the Appellant had agreed to pay the dues of Rs.1,04,79,225/- being the TOD differentials from December 2010 to March 2012 in accordance with Clause 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Aggrieved by BESCOM's stand, the Appellant again approached 2nd Respondent and, however, this time the 2nd Respondent dismissed the complaint.

4. Further, the 1st Respondent has failed to follow the procedure laid down under Clause 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka for making supplementary claims and failed to issue provisional assessment order giving 15 days' notice to the Appellant to file objections, if any, and after considering the objections of the consumer, the 1st Respondent should have passed final order. Failure to follow the procedure has rendered the claims invalid and, hence, liable to be quashed.

5. In his response, the 1st respondent claimed that the demand had been raised on the basis of audit report which said that in the past, energy charges had been collected on the basis of the consumption recorded in TOD meter based on time zones like BO, B1 and B2 which had been incorrect and BESCOM should take the consumption recorded in the KWH meter. Further denied the claims of the Appellant that opportunity had not been given to file objection. Hence, sought dismissal of the appeal.

6. Case was taken up for hearing on 17.01.2014. On behalf of the Appellant, Advocate Shri D.Manjunth Rao submitted arguments. On behalf of the 1st Respondent, Shri Vinayaka advanced arguments. Both the Advocate for the Appellant and the Counsel for the 1st Respondent reiterated the submissions made in

the appeal memo and statement of objection respectively during the hearing dated 17.01.2014 and 28.01.2014

7. Both parties were informed vide letter No.OMB/B/G-150/2014/322 dated 03.01.2014 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. Taking into consideration the contending position of the parties, the following issue emerges for our consideration:

9. While making 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 claim invalid?

10. 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 to the installation shall be disconnected and such amount shall be deemed to be arrears of electricity charges"**

11. The Law Officer, BESCOM, argued that BESCOM had sent two letters dated 14.08.2012 and 26.07.2012 requiring the Appellant to pay the amount. Perusal of

the letters reveals that in these two letters the 1st Respondent had called upon the Appellant to pay the amount. However, they cannot be called provisional assessment orders because the 1st Respondent, in the so-called provisional assessment orders, has not given 15 days' notice to the Appellant to file his objections, if any, against such provisional order, but simply advised the Appellant to pay the amount. The 1st Respondent was required to give 15 days' notice to the Appellant to file objection, if any, as per Clause 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and, in case objections were filed, then such objections were required to be considered before passing the final order.

12. Further, the Law Officer, BESCO contended that in order to sort out this issue, a meeting was convened and in the meeting, the Appellant's official admitted the liability and agreed to pay the amount. The Appellant's Advocate denied the official present in the meeting had agreed to pay the amount. Further reading of the proceedings reveals that the Licensee's official had assumed that the Appellant's official had agreed to pay the amount and, hence, he proceeded to pass the order. In the proceedings, the 1st Respondent is found to have passed an order. The last paragraph has a caption "**order**" and this paragraph states that the demand raised for Rs.1,04,79,225/- is in accordance with Clause 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and failure to pay the amount would attract interest and, hence, the Appellant to pay the amount within 15 days. The 1st Respondent called a meeting on 19.10.2012 and recorded the proceedings of the meeting. The proceedings should reflect the discussions held in the meeting. In the present case, though the caption at the top confirms that it is a proceeding of the meeting, the last paragraph of the proceeding has another caption "**order**" which creates doubts in one's mind whether this should be taken as proceedings of the meetings or should be treated as order. Neither the proceedings nor the order comply with Clause 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Even the letters issued to the Appellant dated 14.08.2012 and 26.07.2012 have failed to comply with

Clause 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and non-compliance of Clause 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka has definitely rendered the claims invalid. Hence, the impugned order passed by the 2nd Respondent upholding the claims made by the 1st Respondent does not stand the legal scrutiny as the 1st Respondent, at no point of time, is found to have issued provisional assessment order by giving 15 days' notice to the Appellant nor found to have considered the objections of the Appellant and passed final orders. Hence, the following order:

ORDER

14. For the foregoing reasons, the demand raised by the 1st Respondent against the Appellant for Rs.1,04,79,225/- and the impugned order passed by the 2nd Respondent upholding the demand are set aside. The case is 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.

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


(B.R. Jayaramaraje Urs)
Electricity Ombudsman

1. M/s.Vijayaa Steels Limited, No.37, Peenya Industrial Estate, Bangalore-560058 (represented by its Legal Counsel, Sri Shridhar Prabhu & Associates, Advocates, Bangalore).

2.The Chairperson, Consumer Grievance Redressal Forum, BESCO, Bangalore

3. The Assistant Executive Engineer (Ele), O & M Sub Division, BESCO, Kunigal (represented by Shri Vinayaka, Law Officer, BESCO, Bangalore).

4.Managing Directors of ESCOMs.

5.Shri Vinayaka, Law Officer, BESCO Corporate Office, K.R.Circle, Bangalore

6. PS to Hon. Chairman, KERC

7. PS to Secretary, KERC