



D No.479

## 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-201/2014

Dated the 23<sup>rd</sup> March 2015

M/s. Vijaya Steels Ltd,  
No 37,Peenya Industrial Estate  
Bangalore-560058  
**(Represented by Sri Shridhar Prabhu, Advocate)**

... Appellant

V/S

1) The Assistant Executive Engineer(EI)  
O&M Sub-division,BESCOM,  
Kunigal,Tumkuru District  
**(Represented by Sri Vinayaka.K, Law Officer)**

2) The chairperson  
CGRF,Tumkuru Circle Office,  
BESCOM, Shivakumara Swamy  
Circle,Kotitopu Road  
Tumkur-572102

... Respondents

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1. This is an appeal under clause 21.02 of KERC (CGRF & Ombudsman) Regulations,2004 against the orders passed by the CGRF,BESCOM, Tumkuru

District, Tumkuru ( here in after referred to as the 2nd Respondent) vide order No SEE/EE(o)/SPA/TKR/14-15/98-103 dated 22.11.2014 with regard to (a) the demand raised by the 1st Respondent against the appellant, (b) refusal of the 1st Respondent to install the pre paid meter and (c) refunding of security deposit. The 2nd respondent has declined to grant any relief to the appellant. Aggrieved by the orders passed by the 2nd Respondent, the appellant has submitted his case as under:

(a) The appellant, Vijaya Steels Limited has set up a manufacturing unit in Survey No 84/11 of Kallnayakanahalli, Anchepalya, Kunigal Tq, Tumkur District. The appellant company is a registered HT-2(a) electricity consumer of BESCO. Installation is assigned R.R No KEHT-1. The appellant is a prompt payer of electricity bills and at no point time he had any dispute with BESCO. The appellant company furnished security deposits and ASD for Rs. 1,91,64,018/-. When matter stood at this, the 1st Respondent, without prior notice, issued a letter dated 16th April, 2013 advising the appellant to pay an additional security deposit of Rs. 72,85,000/- within 15 days of the receipt or face disconnection of power supply.

2. Again, the 1st Respondent issued another letter dated 24/10/2013 to the appellant demanding ASD. This time the 1st Respondent demanded an ASD of Rs. 4,29,40,500/-. However, the appellant furnished a reply dated 9/01/2014 to the 1st Respondent. The appellant, in his reply, informed that the company had not received the details of the demand and from the preliminary verification of the demand the company had noticed that the 1st respondent had levied other than the fixed charges, and energy charges and the same was not permissible under the Act & Regulations. Further, the

appellant conveyed to the 1st Respondent of its willingness to purchase power through open access and the 1st Respondent to wheel such power on payment of wheeling charges. Besides, the appellant issued one more letter dated 28th January, 2014 through its advocates, M/s Link Legal India Law services stating that the company had decided to opt for the prepaid meter and hence (a) the 1st Respondent to install the prepaid meter, (b) to return the security deposits already deposited along with interest, (c) and to withdraw the demand for ASD. Instead of withdrawing the demand, the Chief Engineer (EI), BESCO issued a letter to the 1st respondent dated 24<sup>th</sup> February, 2014 with a copy to the appellant falsely stating that the appellant had agreed to pay the additional security deposit as claimed by the 1st Respondent in three instalments and hence advised to collect the amount before 15th of March 2014. Being aggrieved by the illegal demand issued by the 1st respondent, the appellant filed a complaint before the 2nd Respondent under section 42 of the Electricity Act, 2003 seeking setting aside of demand bearing No GM(Rev) DGM(HT cell) BC-22/3714/13-14/1248 dated 17th February, 2014. Earlier, the appellant had filed a complaint before the CGRF, Bangalore Rural District, and later discovered that he had to file complaint before CGRF Tumkuru. During the pendency of the complaint, the 1st Respondent without following Regulation 7 & 8 of KERC (CGRF & Ombudsman) regulations, 2004 disconnected power supply to the appellant's installation. After several requests, the appellant could persuade the 1st respondent to reconnect power supply. In the mean time, the appellant filed a W.P before the Hon'ble High Court and the Hon'ble High Court disposed the writ petition issuing direction to the 2nd Respondent to consider the complaint of the appellant and to pass orders within 15 days. Hon'ble High Court passed the orders on 30.06.2014 and the 2nd

Respondent passed orders on 22.12.2014 rejecting the pleas of the appellant.

3. The 2<sup>nd</sup> Respondent in its order has failed to consider section 47(5) of the Electricity Act, 2003, which states that if the consumer is prepared to take supply through prepaid meters, the Licensee shall not insist on payment of security deposits or additional security deposits and hence prayed this authority (a) to set aside the impugned order, (b) issue direction to the 1st Respondent to install the prepaid meter, (c) issue directions to refund the security deposit already made and (d) directions to withdraw the demand issued for additional security deposits.

4. The 1st respondent's comments were called vide No OMB/B/G-201/2014/450 dated 09.12.2014.

5. In his comments, the 1st Respondent submitted that the installation bearing RR No KEHT-1 had been serviced on 03.02.2007 under HT-2(a) category and a notice had been issued on 21.12.2013 to pay Rs 4,29,40,500/- as additional security deposits as per KERC (security Deposits) Regulations, 2007 and this notice had been issued to the appellant to file objections, if any. In pursuance to this, the appellant had sought details of ASD and accordingly the calculation statement had been furnished on 16.01.2014. The appellant had pointed out that the Fixed charges and Electricity are not part of ASD. Admitting the mistakes, BESCO issued a revised calculation statement on 09.06.2014 calling upon the appellant to pay the revised ASD. BESCO had claimed ASD based on the average consumption of preceding 12 months multiplied by 2. The installation had an average consumption of Rs. 2,95,20,037.5 and as per the regulation the consumer

had been required to deposit Rs. 2,95,20,037.5x 2. The existing deposit was Rs. 1,91,64,018/- and hence Rs. 3,98,76047/- had been claimed as ASD. The appellant had not disputed the revised bills and admitted the correctness of the bill and hence he was bound to pay ASD.

6. Further, regarding the prepaid meter, the 1st respondent submitted that same were not provided to any of the consumer due to non availability of such meters and hence the contention of the appellant that non providing of prepaid meter was a ground for non payment of ASD could not be accepted besides the appellant was not given a choice to opt for prepaid meter and hence prayed this authority to dismiss the appeal.

7. The case was taken up for hearing on 20.02.2015 and hearing got concluded on 05.03.2015. On behalf of the appellant, Shri Shridhara Prabhu, advocate, advanced his arguments and on behalf of the 1st respondent, Shri Vinayaka, Law Officer, BESCO put forth his arguments.

8. The advocate for the appellant argued that the appellant had shown preparedness for the installation of prepaid meter. It is not the case of the 1st Respondent that the appellant has not shown any preparedness for the installation of pre-paid meter. If the appellant had not shown preparedness, the 1st Respondent would not have sent a letter stating that meters were not available. The cause of action for filing the complaint before CGRF and the Ombudsman is the rejection of appellant's request for installation of prepaid meter. BESCO sought for ASD (Additional Security Deposit) and following this, the appellant communicated to the 1st Respondent his preparedness to install the prepaid meter. Security Deposit is not consumption related.

9. Further, submitted that paragraph 35 of KERC tariff order 2015 observes BESCO having brought to the notice of the commission of their being in the process of installing & commissioning 3525 Nos. of prepaid meters in Indiranagar, Division Bangalore on pilot basis. This reply belies that their statement that they have no prepaid meters. BESCO has taken a decision to install prepaid meter without any request from the consumer. BESCO could have given one meter to the appellant. KERC Tariff order, at page LV says that non availability is the ground urged by BESCO for installation of prepaid meter, but this is not true, because BESCO has already announced that it would install prepaid meters. KERC is of the opinion that Prepaid meters should be encouraged and its tariff order discloses that BESCO has prepaid meters. Final installation of the prepaid meter is not a pre-condition for return of security deposit. It is the preparedness of the appellant to take supply through pre-paid metre.

10. The counsel for the 1st respondent reiterating the submission made in his statement of objections, argued that the appellant has not applied for prepaid meter as of today. When the Licensee served notice for ASD, the appellant came out with this objection which it is an after thought. There is no demand from the consumer for prepaid meters. The appellant cannot take such defence.

11. Secondly, the Licensee has not started the procedure of issuing prepaid meters in its jurisdiction. GOI, Ministry of Power in its letter vide No 25/25/2004/R&R(PT) dated 11th February,2005 has clarified that as and when Distribution Licensee provides a choice to the consumers to opt for prepaid meters, he will not be entitled to demand security from those

consumers who are prepared to take supply of electricity through such meters. This letter is sent to all the ESCOMS.

12. The counsel for the 1<sup>st</sup> respondent added that the appellant is not given the option to take supply through prepaid meters because of non-availability of prepaid meters to the extent of demand. Further, without reference to GoI notification, the Licensee has got the right to collect ASD. Consumer can approach KERC if he has a grouse that the Licensee has violated section 47(5) of the Electricity Act and the appellant cannot plead Section 47(5) violation case before the Ombudsman.

13. The counsel for the 1<sup>st</sup> Respondent maintained that the appellant has not applied for prepaid meter. The demand in question relates to financial year 2012-13 and as per Regulation 6 of KERC (Security Deposits) Regulations, 2007, the appellant is bound to pay ASD. Section 47(5) of the Electricity Act, 2003 will have a prospective implication. This authority has to decide the consumer liability to pay ASD as per the demand notice dated 16.01.2014. As on that date, the consumer had not opted for the prepaid meter and the Licensee had not provided prepaid meter. Under such circumstances, as per clause 6 of KERC (Security Deposits) Regulations, 2007, the consumer is liable to pay the ASD.

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

- (a) Whether the appellant had applied for installation of prepaid meter before the Licensee issued demand notice for Additional Security Deposit?

(b) If the appellant had not applied for the prepaid meter before issue of demand whether the appellant can take shelter under Section 47(5) of the Electricity Act,2003 and refuse to pay ASD?

15. From the available records, it is seen that the Licensee has issued a demand for ASD amounting to Rs. 4,29,40500/- as per KERC (Security Regulation) 2007 on 24.12.2013. In response to this, the appellant is found to have questioned the method of calculation of ASD. Following this, the Licensee appear to have issued a revised demand for Rs. 3,98,76,047/-. The appellant is found to have taken objection to the demand issued by the Licensee and claimed that he was not required to pay ASD as he was applying for prepaid meter. The law officer, BESCO during the hearing submitted that the demand in question pertained to 2012-13 and demand notice was issued on 16.01.2014 and the Licensee had not opted for prepaid meter on the date of issue of demand notice and for that matter even today formal request has not come from the appellant for prepaid meter and only when the Licensee served the notice on the appellant, he came out with this objection and hence the appellant's plea that he is not liable to pay ASD has no legal basis.

16. Verification of records shows that the appellant has not made any application for prepaid meter except making a passing reference in his objection filed in response to the demand notice issued by the Licensee. This casual mention cannot be deemed application for prepaid meter and if the appellant filed application for prepaid meter it would have a future applicability and hence it will not have any bearing on the demand pertaining to 2012-13. Section 47(5) of Electricity Act,2003 states that `` *A Distribution*



*Licensee shall not be entitled to require security in pursuance of clause (a) of sub section (1) if the person requiring the supply is prepared to take the supply through a prepayment meter.*" This clarifies that the exemption from payment of ASD will have a prospective applicability from the date of consumer filing application for supply of prepaid meter and it does not have retrospective applicability as claimed by the appellant and hence it emerges that the appellant had not applied for prepaid meter at the time of service of demand notice seeking ASD in 2012-13 and hence the arguments that the appellant is not liable to pay ASD does not hold water and therefore he cannot take protection under section 47(5) of Electricity Act,2003 as it has a prospective applicability from the date of appellant filing application for prepaid meter and this does not have a retrospective applicability and hence the appellant becomes liable to pay ASD as demanded by the Licensee. The argument of the appellant that he had shown preparedness for the installation of prepaid meter after the issue of demand notice does not exempt him from paying ASD as the demand pertained to previous period and hence the arguments of the appellant that he is not liable to pay ASD is not acceptable and hence rejected.

17. The appellant citing the KERC tariff order submitted that BESCO has before the commission made it known of its being in the process of installing 3525 Nos. of prepaid meter in Indiranagar Division, Bangalore on pilot basis and thus it belies BESCO statement that they do not have prepaid meter. BESCO has taken a decision to install prepaid meter without any request from the consumers and BESCO could have given one prepaid meter to the appellant. The appellant, in the present case, has not urged this Authority for issue of directions to BESCO for supply of prepaid meter and hence this authority cannot issue any direction to BESCO in this regard. However, the

appellant is at liberty to approach BESCO for supply of prepaid meter and if BESCO fails to supply prepaid meter, the appellant can approach KERC for non-supply of prepaid meter and for violation of Section 146 of the Electricity Act, 2003. Hence, this authority proceeds to pass the following order:

**ORDER**

For the foregoing reasons, the appeal is dismissed.



(B.R. Jayaramaraje Urs)  
Electricity Ombudsman

1. M/s. Vijaya Steels Ltd, No 37, Peenya Industrial Estate, Bangalore-560058 (represented by its Legal Counsel Sri Sridhar Prabhu, Advocate, Bangalore).
2. The Assistant Executive Engineer (EI), O&M Sub-division, BESCO, Kunigal, Tumkuru District.
3. The Chairperson, CGRF, Tumkuru Circle Office, BESCO, Shivakumara Swamy Circle, Kotitopu Road, Tumkur-572102
4. Managing Directors of ESCOMs
5. PS to Hon'ble Chairman, KERC
6. PS to Hon'ble Member (A), KERC
7. PS to Hon'ble Member (M), KERC
8. PS to Secretary, KERC