

Before the Ombudsman, K.E.R.C. Bangalore

Present: Shaik Ahmed,
Ombudsman
Case No.OMB/B/G-28/2007/
dated 21.06.2007

Appellant :

M/s.Prestige Property Management & Services,
Prestige Blue Chip,
No.918, Hosur Road,
BANGALORE.

Respondents:

1. The Asst,Executive Engineer,
S-2 Sub Division, BESCOM,
Wilson Garden,
BANGALORE.

2.Consumer Grievance Redressal Forum,
BESCOM, Central Stores Premises,
Near E.S.I. Hospital,
Rajajinagar,
BANGALORE-10.

1. The Appellant has filed this appeal against the Order dated 27.12.2006 passed by the 2nd Respondent in file No.CGRF/84/2006/1500. The facts of this case are briefly stated below:

2. The 1st Respondent has issued a demand notice calling upon the Appellant to pay a sum of Rs.94,08,268/- in respect of his HT installation bearing RR No.S2HT76. The demand for the above amount was on account of the change of tariff from HT-2(a-Industrial) to HT-2(b-Commercial) for a period of about 46 months due to non-production of a certificate from the Department

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of Information Technology and Bio-Technology (in short, IT/BT). Aggrieved by the action of the 1st Respondent, the Appellant had filed a Petition before the 2nd Respondent seeking relief from the levy of Rs.94,08,268.00. The 2nd Respondent, after hearing both the parties, has set aside the demand notice and ordered to revise the bill under HT-2(b-Commercial) category in accordance with Clause 4.13 of KERC(Electricity Supply) Code 2004. The 2nd Respondent has also ordered to bill the Appellant for misusing the electricity for commercial purpose from the same installation in a portion of the premises which is rented out to M/s.Hutch Cellphone Company .

3. The Appellant, aggrieved by the order of the 2nd Respondent, has filed this appeal. He contends that the above installation has been sanctioned by the Chief Engineer, BMAZ, KPTCL under HT-2(a-Industrial) category for the purpose of software development which was approved by the single window agency of the Government as per its IT Policy. He further states that the 1st Respondent has no authority to change the category of the installation from industrial to commercial just because a certificate from the IT/BT department is not produced. He admits the misuse of electricity from the same installation for commercial purpose, but contends that the 1st Respondent has not billed the misuse of electricity in accordance with Clause 42.02 of the KERC(ES&D) Code 2000-01 as ordered by the 2nd Respondent. According to him, Clause 42.02 of the above Code provides for billing the misuse of electricity at twice the rate for a maximum period of 6 months immediately prior to inspection whereas the 1st Respondent has billed the misuse of electricity for a period of 19 months. He, therefore, prays to limit the billing for the misuse of electricity for a maximum period of six months as provided in Clause 42.02 of the KERC (ES&D) Code 2000-01.

4. I have gone through the records furnished by both the parties. I have

also heard the Appellant and perused the written submissions made by the 1st Respondent. As seen from the records, the Chief Engineer, BMAZ, KPTCL, Bangalore has sanctioned power supply with a sanctioned load of 1250 KVA under HT-2(a) category for software development activity. The Appellant admittedly has misused the electricity for commercial purpose in a portion of the premises which is let out to a commercial firm. As per Section 126(5) of the Electricity Act 2003 (as amended with effect from 15.06.2007) all unauthorized use of electricity has to be assessed for the entire period during which such unauthorized use has taken place. If the date of unauthorized use of electricity is not definite, in such cases the assessment has to be limited to 12 months prior to the date of inspection. In view of the latest amendment of Section 126(5) of the Electricity Act, 2003, Clause 42.02 of the KERC (ES&D) Code 2000-01, as it stands now, is not in conformity with the provisions of Section 126(5) of the Electricity Act 2003. KERC is taking action to amend Clause 42.02 of the above Code in conformity with Section 126(5) of the Electricity Act 2003. The billing for unauthorized use of electricity will have to be for the entire period of unauthorized use or for a period of 12 months immediately prior to inspection if the date of unauthorized use is not definite. The argument of the Appellant to assess the unauthorized use for a maximum period of 6 months has no locus standi in the present dispensation provided under Section 126(5) of the Electricity Act, 2003.

5. As per Regulation 2(g)(1) of the KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2004, the CGRF and Ombudsman are barred from entertaining petitions relating to unauthorized use of electricity. Therefore, the decision of the CGRF with regard to billing of the unauthorized use of electricity cannot survive. It is for the 1st Respondent to take appropriate

action under the amended provisions of Section 126(5) of the Electricity Act 2003 for billing the misuse of electricity.

6. The Appellant has admittedly misused the electricity leading to the breach of the conditions of the agreement. The 1st Respondent has called upon him to produce a certificate from the Department of IT/BT to establish that the usage of electricity is for the software development. The Appellant has not produced any certificate from the IT/BT or any other relevant Government Department (which dealt with the software development before the establishment of the IT/BT Secretariat in the Government). The 1st Respondent has therefore billed the installation under HT-2(b-Commercial).

7. In a similar case (M/s.Satyam Computers – installation No.S2HT66) the Consumer was asked to produce a certificate from IT/BT Department to establish the usage of electricity for software development. The firm in that case produced the certificate and established the usage of electricity for HT-2(a-industrial) purposes. The Appellant in this case can also obtain a certificate from IT/BT Department if he is really using the installation for the purpose of software development. There is no reason for the Appellant for not getting a certificate from the IT/BT Department and nothing prevents him to get such a certificate even now to establish his claim. He can clear the revised demand as preferred by the 1st Respondent under protest and get it refunded after producing a certificate from the IT/BT Department. I, therefore, see no reason at this stage to interfere with the action of the 1st Respondent and the order of the CGRF in the matter of billing the installation under HT-2(b-Commercial) category.

ORDER

8. In the circumstances explained, the Order dated 27.12.2006 passed by the 2nd Respondent in file No.CGRF/84/2006/1500 with regard to billing of the misuse of electricity in respect of the above installation as per Clause 42.02 of the KERC (ES & D) Code 2000-01 is **set aside** as CGRF is not competent to pass order in the matter of unauthorized use of electricity for the reasons indicated in para 5 above. It is for the 1st Respondent to take appropriate action in terms of the amended provisions of Section 126(5) of the Electricity Act, 2003.

The order of the 2nd Respondent for billing of the installation under HT-2(b-Commercial) for a period for 2 years stands.

The Appeal is accordingly disposed.

(Shaik Ahmed)
Ombudsman

1. M/s.Prestige Property Management & Services, Prestige Blue Chip, No.918, Hosur Road, Bangalore.
2. Consumer Grievance Redressal Forum, BESCO, Central Stores Premises, Near E.S.I. Hospital, Rajajinagar, Bangalore-10.
3. The Asst, Executive Engineer, S-2 Sub Division, BESCO, Wilson Garden, Bangalore.
4. The Managing Director, BESCO Corporate Office, K.R.Circle, Bangalore-560001

5. The General Manager, (Tech), BESCO, Corporate Office, K.R.Circle, Bangalore-560001.

6.PS to Chairman 7.PS to Member-I 8.PS to Member-(Tech) 9. Secretary

10. Consultant (O.C.A.) 12. Chairpersons of all CGRF /