



**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-128/2011/103**

**Dated 31.08.2012**

Shri M.L.Ashok,  
M/s.Maruthi Rice Mills,  
Near Kalludi, B.H.Road,

**GAURIBIDANUR**

**(Represented by Sri M.A.Delvi, Advocate -  
Authorised Representative)**

**.. Appellant**

**Vs**

1. The Asst. Executive Engineer(EI)  
C,O & M Sub Division,  
BESCOM,

**GAURIBIDANUR**

2. The Chairperson,  
Consumer Grievance Redressal Forum,  
BESCOM. Corporate Office,  
K.R.Circle,

**BANGALORE-560001**

**.. Respondents**

01. This is an appeal under clause 21.2 of KERC (CGRF & Ombudsman) Regulations, 2004 against the orders passed by the Consumer Grievance Redressal Forum, BESCOM, Bangalore (hereinafter referred to as the 2<sup>nd</sup> Respondent) vide No CGRF/63/2011/444-50 dated 21.11.2011 in respect of the Appellant's grievance relating to short claim raised by the Assistant Executive Engineer, BESCOM, Gauribidanur, C,O&M Sub-Division (hereinafter referred to as the 1<sup>st</sup> Respondent) for

Rs.36,86,077/- on account of wrong reading of TOD (Time Of Day) Meter and refusal of the 2<sup>nd</sup> Respondent to interfere in the decision of the 1<sup>st</sup> Respondent. Aggrieved by the 2<sup>nd</sup> Respondent's order, the Appellant has submitted his case as under:

2. The Appellant is an Electricity consumer of BESCO under H.T 2(a) tariff category. The subject installation was serviced on 18.10.2006 with a sanctioned load of 150 K.V.A. The Installation was assigned R.R No G.R.H.T 13. Time of Day Meter was fixed to the installation by the 1<sup>st</sup> Respondent at the time of service. The TOD meter contained 5 Time Zones and these zones were designated as T0,T1,T2,T3,T4. The TOD Meter reflected consumption according to time zones. The installation was subjected to pre-commission test at the time of servicing. After servicing the installation, it was subjected to calibration by the Licensee. When things stood at this, on 04.09.2010 the Licensee raised a demand notice against the Appellant for Rs.40,91,728/- on the grounds of wrong reading of the TOD meter. Back billing was made for the period from 18.10.2006 to 25.08.2010 (4 years). The Demand Notice dated 04.09.2010 was issued in pursuance to the calibration carried out by the H.T Rating Division dated 25.08.2010. The H.T Rating Division, in their, report observed that the TOD meter had not been read correctly by the Assistant Executive Engineer(EI) and, hence, the short claim.

03. Aggrieved by the decision of the 1<sup>st</sup> Respondent, the Appellant approached the 2<sup>nd</sup> Respondent on 15.04.2011 and the 2<sup>nd</sup> Respondent passed the impugned order on 21.11.2011. The 2<sup>nd</sup> Respondent declined to give any relief to the Appellant and directed the Appellant to pay the short claims in 10 instalments without any interest. Before the 2<sup>nd</sup> Respondent, the Appellant sought two reliefs: (1) To order billing of the installation according to the time zone available in the TOD Meter treating it as a **"Deemed Service"** and (2) To restrict the short claim for 2 years in accordance with clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. During the hearing, the 2<sup>nd</sup> Respondent appraised itself of the deficiency in service, but did not grant any relief to the Appellant. During the pendency of the case before the 2<sup>nd</sup> Respondent, the

Appellant requested the Licensee to activate the TOD facilities available in the meter and to assess the installation as per TOD Tariff. Though the representation was acknowledged, the service is not extended till today. Hence, prayed this authority to set aside the order of 2<sup>nd</sup> Respondent and to direct the Licensee to treat the TOD Meter as "**Deemed Opted**" and extend the tariff as applicable to different time zones.

04. The 1<sup>st</sup> respondent's comments were called vide letter No OMB/B/G-128/2012/170 dated 30.01.2012 (2) OMB/G/G-128/2012/81 dated 3-7-2012 and the 1<sup>st</sup> respondent has furnished his comments vide letter No: AEE/AAO/GBDR/596-98 dated 26.07.2012.

05. In his comments, the 1<sup>st</sup> Respondent submitted that the Appellant's installation had been installed on 18.10.2006 under H.T 2(a) tariff and the installation had been provided with TOD Meter. The TOD Meter has 5 time zones and consumption under each time zone is reflected in different formats like COKWH, C1KWH, C2KWH, C4WH & CKWH. Since BESCO Engineers had not been trained sufficiently in reading TOD Meter, the Assistant Executive Engineer (EI), C,O&M Sub-Division, Gauribidanur had been at a loss to understand as to which parameters had to be read to determine the consumption etc. and, instead of taking consumption of all the time zones, had taken only one time zone and billed. This pattern of billing continued till the flaw had been detected by the H.T Rating Division. However, in the present case, though the Appellant had been provided with TOD meter, he had not exercised the TOD option as per KERC Regulations. This was clear from HT Rating Division's report which stated that the AEE had read the consumption of only one time zone, leaving the other time zones unread which resulted in back billing for Rs.38,86,007/-. Aggrieved by this back billing, the Appellant had filed a complaint before the 2<sup>nd</sup> Respondent and the 2<sup>nd</sup> Respondent, after hearing both parties, passed order confirming the demand raised by the 1<sup>st</sup> Respondent. Hence, prayed this Authority to confirm the order of the 2<sup>nd</sup> Respondent.

06. The matter was taken up for hearing on 25.07.2012 and, on behalf of the Appellant, Shri M.A.Delvi, Advocate, appeared and argued the case and, on behalf of the 1<sup>st</sup> Respondent, Shri Vinayaka.K , Assistant Law Officer, BESCO appeared and putforth his arguments and the arguments from both sides got concluded on 29.08.2012.

07. The Advocate, Shri M.A.Delvi, appearing for the Appellant, reiterated the submissions made in the appeal memo and further argued that the TOD Meter had been fixed to the installation before servicing and also subjected to the pre-commission test dated 28.12.2006 and it had been clearly stated in the Test Report that TOD facility had been enabled in this meter and that meant that the consumer had been allowed to use this facility without any conditions. Wording implied that the equipment was activated and ready for use. However, the Licensee, without educating the consumer about the equipment, had raised this demand which was unacceptable to the Appellant. Further, the Advocate submitted that under Section 56(2) of Electricity Act, 2003 and Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, the Licensee cannot recover its dues from the Consumer after the period of two years from the date when such sum became first due and, hence, in the instant case the Licensee had to restrict its claims only for a period of 2 years.

08. Thirdly, the advocate prayed this Authority to direct the licensee to effect TOD facility from the date of filing the application i.e, 17.10.2011.

09. Mr Vinayaka K, Assistant Law Officer, BESCO, while reiterating the submissions made in the parawise remarks, added that the Appellant's contention that the TOD facility had to be treated as "**deemed opted**" could not be accepted because the KERC Regulations made the TOD facility optional and if any consumer wanted this facility, had to give it in writing to the Licensee and, in the present case, the Appellant had not exercised such an option during the disputed period and, hence, "**deemed opted**" facility had not been made available to the Appellant. As per Clause 8.13 of Conditions of Supply of Electricity of Distribution Licensees in the

State of Karnataka ***"T.O.D Tariff facility shall be extended to any applicant/consumer at his option for eligible category."***

10. Regarding the arguments of the Advocate for the Appellant that the Licensee has to restrict its claims only for two years as per Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, the Assistant Law Officer, BESCOM submitted that this Clause did not specify any time frame for recovery of legitimate dues and that this Clause stated that two years limitation starts from the date of knowledge of such error and in the present case the Licensee had claimed the amount within the specified period. Assistant Law Officer, citing the ruling of the Hon'ble High Court of Karnataka in the case of Ghousia College Vs BESCOM, argued that the Hon'ble Court had ruled that "two years has to be reckoned from the date of issue of demand and not earlier to that and the Court further held that ***"Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka has to be considered for the purposes of calculation of period of 2 years only from the date of knowledge e and not from the date on which the sum became first due."*** Though the decision of the Single Judge is challenged before the Division Bench of the Hon'ble High Court, all the Subordinate Courts including this Authority have to follow the order of the Single Judge till further orders by the Division Bench.

11. The Assistant Law Officer, BESCOM rebutted the arguments of the Appellant regarding competence of this Authority to give independent ruling on Section 56(2) of the Electricity Act and Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka in spite of High Court ruling in the case of Ghousia College and clarified that such arguments ran contrary to Articles 226 and 141 of the Constitution and all Subordinate Courts are bound by the Apex Court's Order and this ruling is applicable to the case on hand.

12. The Assistant Law Officer added that in the relevant Electric Sub-Division, 16 TOD Meters had been fitted and out of this only one consumer had exercised TOD option in writing. If the request of the Appellant were to be accepted, then there

would be hundreds of claims from other Consumers for similar benefit which will not be good from the point of view of BESCO's revenue.

13. Both parties were informed during the hearing 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.

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

**15. Whether the Appellant can claim TOD Tariff without exercising the TOD option in writing?**

**16. Whether the Licensee is justified in back billing for the period of non exercising of TOD option by the Appellant ?**

**17. Whether the Appellant can raise fresh issues before the appellate authority which are not covered before the 2<sup>nd</sup> Respondent and whether this Appellate Authority can give decisions on such fresh issues?**

**18. Whether this Authority has got powers to interpret Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, when there is a direct ruling by the Hon'ble High Court on the issue?**

19. In order to answer the first question, we will have to refer to the Tariff Orders issued by KERC during the relevant years. It is seen from the Tariff Orders that KERC has made a separate schedule for TOD category under the caption "**TOD Tariff applicable to HT 2(a) (i) &(ii) category at the option of the Consumer.**" This schedule has given option to the consumers regarding use of TOD facilities. This facility is extendable to the Consumer when he exercises this option and this facility is not compulsorily extendable to him. In the present case, the Appellant has not exercised the TOD option throughout and this is clear from the

arguments of the Assistant Law Officer, BESCO and also from the prayer made by the Appellant in the appeal memo which states ***"Direct the Respondent to revise the claim in accordance with the consumption recorded in the time zone by treating the installation as Deemed Opted."*** In the light of not exercising the TOD option, TOD tariff cannot be applied retrospectively to the Appellant as it violates KERC Tariff order. Hence, short claims made by the Licensee are held valid.

20. The Appellant's Advocate has prayed this authority to direct the Licensee to effect TOD facility from the date of filing application. This issue appears to have not been raised by the Appellant before the 2<sup>nd</sup> Respondent and, hence, this Authority cannot entertain fresh issues/claims which are not raised before the 2<sup>nd</sup> Respondent. This Authority, being the Appellate Authority, has to confine itself in its order to the correctness of the order passed by the Forums and decide whether the orders passed by the Forums are in accordance with the law. This Authority finds force in the arguments of the Assistant Law Officer, BESCO and, if this Authority entertains fresh claims of the Appellant, it will open the flood gates for similar demands by others, besides, it tantamounts to usurping the jurisdiction of the Forums. Hence, this Authority declines to issue any directions to the Licensee on the fresh claims made before this Authority by the Appellant.


21. The Advocate for the Appellant has vehemently argued that Section 56(2) of Electricity Act prohibits the Licensee from claiming its dues beyond a period of two years and this Authority has got powers to interpret Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka independent of the High Court ruling. There is no force in the arguments of the learned Counsel for the Appellant as the Constitution of India has made it clear that under Article 226 and 141, the decisions of the High courts and Supreme Court are binding on the Subordinate Courts and, hence, this Authority endorses the arguments of the Assistant Law Officer, BESCO that this Authority is bound by the decisions of the High Court.

22. In the light of the above discussions, this Authority does not see any merits in the arguments of the Advocate for the Appellant and, hence, declines to give any ruling on Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and declines to issue any directions to the Licensee to restrict its claims only for two years.

23. In the light of the above discussions, I proceed to pass the following order:

## ORDER

23. For the foregoing reasons, **the appeal is disallowed.**



(B.R. Jayaramaraje Urs)  
Electricity Ombudsman

1. Sri M.L.Ashok, M/s.Maruthi Rice Mills, Near Kalludi, B.H.Road, Gauribidanur (represented by Shri M.A.Delvi, Advocate, Authorised Representative)
2. Consumer Grievance Redressal Forum, BESCO Corporate Office, K.R.Circle, Bangalore.
3. The Asst.Executive Engineer (Ele), C, O & M Sub Division, BESCO, Gauribidanur.
4. The Assistant Law Officer, BESCO Corporate Office, K.R. Circle, Bangalore
5. Managing Directors of all ESCOMs.
6. PS to Hon. Chairman, KERC
7. PS to Hon.Member (H), KERC
8. PS to Hon.Member (S), KERC
9. PS to Secretary, KERC
10. OCA