

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

Present: Shaik Ahmed,
Ombudsman
Case No.OMB/C/G-41/2008/4371
Dated 19.05.2008

Complainant :

1.Smt.Samyuktha Lal and
2.Smt.Joyita Bhat
"Sugandhim" Farm,
Kumarabeedu Village,
Mallahalli Post,
Mysore-570026

Respondents:

1. The Asst.Executive Engineer,
Hootagalli Sub Division,
Chamundeswari Electricity Supply Corpn.
MYSORE.
2. The Consumer Grievance Redressal Forum,
CESC, Corporate Office
927, L.J.Avenue Commercial Complex,
New Kantharaj Urs Road,
MYSORE-570009

The Complainants above named have filed this complaint against the order dated 3.1.2008 passed by the 2nd Respondent in file No.8/2007-08/25870-74. Their case is that they have acquired an agricultural land in Kumarabeedu village, Mallahalli Post, Mysore Taluk during 2002 and have taken up farming since then. The land has 3 IP sets the details of which are as under:

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|------------|--------------------|
| 1. MIP 692 | - 5.0 HP |
| 2. MIP 883 | - 7.5 HP |
| 3. MIP 688 | - 7.5 HP (defunct) |

The contention of the Complainants is that though they acquired the land in question during 2002, they have received their 1st electricity bills from the 1st Respondent only during November 2006 with no details such as the period for which the demand related to, basis for the calculation of the amount etc. After receipt of the demand notice, they have approached the Section Office of the 1st Respondent at Yelawala and requested for further details of the demand notice. The Section Office has given them a handwritten statement indicating the details of the demand for the period from April 2003 to November 2006. As per this statement, the demand in respect of borewells bearing No.MIP 692 and MIP 883 for the above period is Rs.20,882 (Principal Rs.15160/- and interest of Rs.5722/-) The demand for the 3rd borewell MIP 688 (which is defunct) is Rs.13921/- (Principal Rs.10100/- and interest Rs.3821/-).

After the receipt of the demand statement, the Complainants have paid a sum of Rs.14586/- in 2 installments during February 2007 and March 2008. Further, they have requested the 1st Respondent to waive off the interest in respect of the 2 borewells as they did not receive the demand notice prior to November 2006. They have also requested the 1st Respondent to waive off the entire demand in respect of borewell bearing No. MIP 688 which is defunct since 2002. The 1st Respondent has not agreed to the request of the Complainants and has informed them to pay the dues as per the demand notice or face disconnection of power supply.

Aggrieved by the 1st Respondent's refusal to accede to their request, the Complainants have filed a petition before the 2nd Respondent (CGRF, CESC) seeking a direction to the 1st Respondent to waive off the interest in respect of the 2 borewells and the demand raised against the defunct borewell. They had also requested direction to instal meters to these borewells.

The 2nd Respondent, after hearing both the parties, has ordered as follows:

- (a) To withdraw the demand notice issued in respect of IP sets bearing Nos. MIP 883 and MIP 692 from April 2003 to December 2006 and to issue a revised bill as per the applicable Tariff without levying any interest.
- (b) To issue a separate bill in respect of the above borewells from December 2006 onwards levying the admissible interest.
- (c) The Complainant to pay the bills so issued in six installments along with interest for the period covered by the installments.
- (d) To withdraw the demand notice In respect of the defunct borewell bearing No. MIP 688 and to issue a revised bill from December 2004 to December 2006 without levying interest and a separate bill levying interest from December 2006 to 9.1.2007 (the date on which the Complainants have informed the 1st Respondent about the defunctness of the borewell). After the consumer pays the bill so issued in 6 instalments, the installation of the defunct borewell should be disconnected permanently.

Not satisfied with the relief granted by the 2nd Respondent, the Complainants have filed this complaint before me praying to set aside the orders of the 2nd Respondent and to grant them the relief they have sought for.

I have gone through the written submissions made by both the parties. I have also heard the Complainants on 12.05.2008. I have recorded the statement of Smt. Purabi Pandey, (mother of one of the Complainants Smt. Joyita Bhat), whom the Complainants want to present their case. Smt. Purabi Pandey has stated that they have acquired the lands in question with 3 borewells during 2002 and of the three borewells, only 2 bearing Nos. MIP 692 and MIP 883 are functioning and the third one (No. MIP 688) has been defunct ever since they acquired the lands during 2002. She further stated that they have received their 1st electricity bills only during November 2006 indicating huge demand without the details such as the period for which the demand was made and the basis for arriving at such huge amounts etc. After getting further details of the demand from the Section Office at Yelawala, they have found that the demand of Rs.20882/- in respect of the 2 borewells was from April 2003 to November 2006 and included an interest of Rs.5722/-. They were also surprised to see the demand of Rs.13921/- in respect of the defunct borewell.

She stated that the 1st Respondent did not send the demand notices periodically and that all of a sudden he has sent the demand notice levying interest for over 3 years. She contended that for the fault of the 1st Respondent for not issuing the notices in time, the consumers should not be penalized by levying interest. She further stated that if the 1st Respondent had sent the bills in time, as law abiding citizens, they would have cleared the bills. According to her, the demand for the borewell which is not in use is unjustified as the consumer cannot be asked to pay for the borewell which did not consume energy. She further added that any arrears of over 2 years cannot be collected under the provisions of Electricity Act 2003 and that the CGRF has failed to appreciate these facts before passing the impugned order. She,

therefore, prays to set aside the Order passed by the CGRF and grant the relief sought by them immediately as the 1st Respondent has threatened to disconnect the service if the bills are not cleared.

The 1st Respondent in his written statement has submitted that the arrears have been claimed from 1.4.2003 in accordance with the applicable tariff. He has stated that the Section Office of Yelowala has been sending demand notices to the consumers regularly by post/muddam. Some times, the demand notices sent by post/muddam are returned undelivered due to non-availability of consumers. But then he has not produced any documentary proof to show that the demand notices were issued regularly to the Complainants from 2002 onwards. In the absence of any documentary proof, I am constrained to infer that the Complainants have received their 1st electricity bills only during November 2006 and that is why they had approached the Yelowala Office immediately to seek further details of the demand.

Section 56(2) of the Electricity Act 2003 reads as follows:

“Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

The above provision of law is also available in Clause No.29.08 (a) of Conditions of Supply of Electricity approved by the KERC vide its Order No.D/7/4/09 dated 2.6.2006.

In the instant case, the demand notice issued by the 1st Respondent violates the above provision of law as it contains the demand of over 3 years. In other words, the demand for April 2003 has been made during February 2007 i.e. after a lapse of over 3 years in violation of Section 56(2) of the Electricity Act. Hence, the demand preferred from 01.04.2003 cannot sustain under law. Further, the demand in respect of the defunct borewell is also not justifiable as no energy has been consumed by this borewell. The KERC in its various Tariff Orders has time and again directed the distribution Companies to instal meters to the IP sets and all other installations as required under Section 55 of the Electricity Act. Had the 1st Respondent installed the meter and recorded the readings for the borewells, he would have detected the exact date on which the borewell had become defunct. Here again, there is a lapse on the part of the 1st Respondent in not installing the meter. The Complainants have informed the 1st Respondent on 09.01.2007 that the borewell bearing No. MIP 688 has been defunct right from 2002 when they acquired the lands. In the absence of a meter, it is not correct to assume that this borewell became defunct only from 9.1.2007.

The CGRF in this case has failed to apply the provisions contained in Sections 56(2) and 55 of the Electricity Act and also to consider other facts like failure of the 1st Respondent to issue demand notices to the Complainants regularly.

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ORDER

In the circumstances stated above, I set aside the order dated 3.1.2008 passed by the CGRF on in file No.8/2007-08/25870-74 and hereby order as follows:

a) to issue a revised demand notice in respect borewells bearing No. MIP 692 and MIP 883 from November 2004 i.e. immediately 2 years preceding the date of the demand notice issued in November 2006 without levying any interest since the Complainants cannot be penalized to pay the interest for the lapse on the part of the 1st Respondent for not issuing the demand notices regularly.

(b)(i) the demand notice issued in respect of the defunct borewell should be withdrawn as it is not established beyond doubt that the energy has been consumed by this borewell.

(ii) The Complainants are at liberty to make an application to the 1st Respondent within 15 days from the receipt of this Order for disconnection of the power supply to the defunct borewell and the 1st Respondent shall disconnect the power supply within 15 days from the receipt of the application from the Complainants. If the Complainants fail to file an application for disconnection within the stipulated time, they shall pay the minimum charges as per the Tariff Order in vogue till the disconnection of the installation even if no energy is consumed. On the other hand, if the Complainants file the application for disconnection within 15 days of receipt of this Order and the 1st Respondent does not disconnect the installation, no minimum charge should be levied on the Complainants.

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(c) The amount already paid by the consumer should be adjusted against the revised demand which is to be made as per this order. Further the 1st Respondent to take action to transfer the installation in the name of the Complainants in accordance with law. The other grievance of the Complainants for the installation of meters is redressed as meters have been installed during March 2008.

Accordingly, the complaint is allowed.

(Shaik Ahmed)
Ombudsman

1. Smt.Samyuktha Lal & Smt.Joyita Bhat, (Postal Address) – P.O.No.412, Mysore University Post, Mysore-570005
2. The Consumer Grievance Redressal Forum, CESCO, 927, L.J.Avenue Commercial Complex, New Kantharaj Urs Circle, Mysore-570009
- 3.The Asst.Executive Engineer, Hootagalli Sub Division, CESC, Mysore,
4. The Managing Director, CESCO, 927, L.J.Avenue Commercial Complex, New Kantharaj Urs Circle, Mysore-570009
5. PS to Hon.Chairman 6. PS to Hon.Member(Tech) 7. OCA 8. Director(Tariff)
8. Chairpersons of all Consumer Fora for information.