

BEFORE THE ELECTRICITY OMBUDSMAN

No.16 C-1, Miller Tank Bed Area (Behind Jain Hospital)
Vasanthanagar, Bengaluru-560052.

Present: **R. Sharada,**
District Judge (Retd)
Electricity Ombudsman,

Case No: OMB/B/G-428/2021

Dated: 19.01.2022

In the matter of

Smt. Parveen Taj,
W/o. Late Hussain Khan,
#4, North Street,
Neelasandra,
Bengaluru – 560047.

Represented by: -

Sri S.A. Wajid, Advocate,
T-5, City Point,
Infantry Road
Bengaluru – 560001.

- Appellant

Vs

1) The Chairperson,
Consumer Grievance Redressal Forum/(CGRF)
Bengaluru Urban District,
BESCOM, West Circle,
Basaveshwarnagar,
Bengaluru – 560079.

1) The Assistant Executive Engineer (Elec.),
O & M S-20 Sub Division, BESCOM,
HSR Layout,
Bengaluru – 560102.
(In Person)

- Respondents

1) This Appeal is filed by the Complainant/Appellant under
Regulation 21.02 of KERC (Consumer Grievance Redressal

Forum and Ombudsman) Regulations 2004, with a prayer to set aside the final order dated 03.03.2021 made by the 1st Respondent in case No. CGRF/11/2019-2020, CP/CGRFBU/ BWC/7069-71 and allow the appeal in the interest of justice and equity.

- 2) The brief facts of the case are that the Appellant/Complainant is the aggrieved consumer of electricity, supplied by the Licensee BESCOM, to the Industrial Unit HP Ice Factory to which RR No. 8SP-1431 is assigned to record the consumption of power. Originally the deceased husband of the Appellant by name Late Hussain Khan was the registered consumer and operating the Ice Block Factory. During his lifetime he had noticed a glaring defect in the running of the meter which was indicating errors in reflecting the correct meter reading thereby, he made a request for dismantle. That in response to the requisition the JE visited the installation spot on 25.07.2017 and having inspected the instrument, checked the complained defect and removed it. When the meter was verified then the reading was showing excess and thus got the meter removed and carried it for checking its accuracy. While taking away the meter, the JE by name Sri Vijaykumar had issued a duly endorsed note observing reading check – 92117 d.7.31, PF 7.85 as on 25.07.2017.

- 3) Further it is stated as a result of dismantling and taking away the meter for checking the meter accuracy, the department raised a short claim due to “No Display MNR” and issued a short claim notice dated 14.12.2018 calling upon the consumer to pay the short claim for a sum of Rs. 8,65,072/-, which was purported to have cover the period from 01.07.2016 to 24.08.2017.
- 4) Further it is stated that the meter that was removed and taken away on 25.07.2017 was brought back and replaced on 24.08.2017 it appears in the short claim notice that the bill was revised for not indicating the recording period from 01.07.2016 to 24.08.2017 and thus considering the average energy consumption of the preceding 3 billing months when the meter was recording regular and proper, the short claim was raised for the average 127768 units for 13 months and 23 days in that contest it is stated that the Appellant has already made payment in respect of RR No. N2SP-1431. The bill payments made by way of Bank draft for the period from 01.07.2016 to 24.08.2017 totaling for a sum of Rs. 3,46,000/-. This amount has been paid by the consumer for the controversial period indicated in the short claim notice. That be in the scenario the claim of the BESCOM holds no water. Therefore, the BESCOM is not

entitled to claim the amount reduced from the short claim of Rs. 8,65,077/- to the modified figure of Rs. 4,17,922/-.

- 5) The Respondent having duly received amount by way of two separate Bank drafts bearing No. 075077 dated 27.06.2017 for a sum of Rs. 1,22,000/- and another Bank draft No. 580107 dated 25.07.2017 for a sum of Rs. 1,00,000/- covering for the period i.e., from 01.06.2017 to 01.07.2017. In proof of this payment the Appellant has produced 'Consumer History Statement' Extract, AEE (Ele), S-20 Agara, relating to the Consumer Late Hussain Khan which clearly indicates the various amounts deposited through Bank transactions.
- 6) Further it is stated despite placing the relevant facts, figures and circumstances before the CGRF, the 1st Respondent has passed final order dated 03.03.2021 by upholding the revised short claims raised by the 2nd Respondent. Aggrieved by this final order which was officially communicated to the Appellant on 23.03.2021, the present appeal is filed on the following grounds: -

GROUND

- a) The impugned order passed by the 1st Respondent is based on miscalculation and manipulations thereby liable to be set aside.

- b) In the short claim notice issued by the 2nd Respondent calling upon the Appellant to pay Rs. 8,65,077/- for the period covered from 01.07.2016 to 24.08.2017 taking the average 127768 units for 13 months and 23 days in that contest the 1st Respondent has not considered the payments of Rs. 1,24,000/- made through DD on 01.05.2017 and Rs. 1,22,000/- made through DD on 01.06.2017.
- c) The EE verified and tested the working condition of the RR Meter 8SP-1431 on 25.07.2017 and prior to that date. The Appellant had made payment of Rs. 1,00,000/- through DD on 01.07.2017 followed by removing the meter for excess reading on 24.08.2017. In that context the final order clearly indicates that Rs. 1,24,000/- was adjusted to bill of 01.04.2017 and Rs. 1,22,000/- was adjusted to bill of 01.05.2017 and Rs. 1,00,000/- was adjusted to bill of 01.07.2017.
- d) The short claim notice dated 14.12.2018 specifically refers to the period from 01.07.2016 to 24.08.2017 raising the bill amount of Rs. 8,65,072/- and in that context the Executive Engineer (Ele) has lost his sight of the amounts paid by the Appellant i.e., Rs. 1,24,000/- on 01.04.2017 and Rs.

1,22,000/- paid on 01.05.2017. As per impugned order these 2 payments have been indicated as adjusted.

- e) The Appellant has made payment of Rs. 1,06,000/- through DD No. 75367 and another payment of Rs. 1,20,000/- through DD No. 175608. In regard to those payments the investigation report dated 18.10.2019 that probed the scam has revealed that Rs. 1,06,000/- has been diverted to 47 RR No's that are not applicable and/or relevant RR No. 8SP-1431.
- f) In response to the number of complaints in the irregularities committed by the BESCOM accounting on various bill payments, an inquiry was held, headed by the then Executive Engineer (Ele), Sri K Shivanna who had conducted the probe and submitted final investigation report dated 18.10.2019. In that report the Investigating Officer gave findings referring to the bill amount of Rs. 8,65,000/- i.e., drawn up on the fake and fictitious data and held that the BESCOM officials and meter testing department have committed fraudulent acts.
- g) During the final stage of the CGRF hearing in case No. CGRF 11/2019-20, the very same Executive Engineer took over as the Chairman and thus passed final order which reflects

contradictory findings that are conflicting and thus opposed to the established legal principles. Thereby the order passed by the 1st Respondent is devoid of legal basis, hence liable to be set aside. Thereby the present appeal filed and the Appellant prays to allow the appeal as prayed for in the interest of justice and equity.

- 7) This Authority has issued notice to the Respondents. The 2nd Respondent has appeared before this Authority in person and filed written objections.
- 8) In the objections the 2nd Respondent has stated that the energy meter bearing RR No. 8SP-1431 was serviced on 15.05.2006 in the name of Sri Shaffiulla Khan A Babu with a sanctioned load of 36 HP under LT-5 Tariff and power being using for Ice Block Factory in the name of M/s. HP ICE BLOCK FACTORY. On 24.08.2017 the said installation was rated by the Assistant Executive Engineer (Ele), Meter Testing Staff and found that the meter was not recording and reported that meter faulty and no display. Based on this report raised a Supplemental claims for the period 01.07.2016 to 24.08.2017 amounting to Rs. 8,65,072/-, on the basis of average energy consumption of the immediately preceding 3 months. A notice also issued which was served on 14.12.2018 duly calling

objections from the consumer if any, within stipulated time for which the consumer raised objections but the same was not considered by the BESCO. Aggrieved by this order of BESCO the consumer filed a complaint before the CGRF which is numbered as CGRF 11/2019-20.

- 9) Further he has stated that, as per electricity bills the consumer has made the payments in respect of RR No. 8SP-1431 i.e., (1) Rs. 1,24,000/- was adjusted to bill dated 01.04.2017 (2) Rs. 1,22,000/- was adjusted to bill dated 01.05.2017 (3) due to cancellation of bill dated 01.07.2017 DD amount of Rs. 1,00,000/- paid by the consumer adjusted the bills dated 01.09.2017 for Rs. 34,793/- and remaining Rs. 65,207/- + interest on IOD totaling of Rs. 75,133/- adjusted to the bill of 01.10.2017. Accordingly, all three demand draft payments adjusted to the amount of regular bills pertaining to the RR No. 8SP-1431. The other averments of the Petition are admitted by the 2nd Respondent. Again the 2nd Respondent has submitted detailed comments on the Petition reiterating the contents of objections finally submitted that based on downloaded data reading was difference between '93822' – '87759' = '6063' units x K-10 = 60630 units billed with

short claim of Rs. 4,17,922/-, which is payable by the Complainant.

Hence, he prays to pass the suitable orders.

10) Heard the arguments and perused of the records.

11) At this stage the below mentioned points arise for my consideration.

a) **Point No. 1:** - Whether the Appellant proves that, the final investigation report dated 18.10.2019, prepared by the Investigating Officer and the impugned order passed by the Chairperson of CGRF are being the one and same person, the orders passed by the 1st Respondent is opposed to legal principles, thereby liable to be set aside?

b) **Point No. 2:** - Whether the order passed by the CGRF/11/2019-2020, CP/CGRFBU/BWC/7069-71 dated 03.03.2021 is arbitrary, capricious, and not sustainable under law, thereby the interference of this Authority is needed.

c) **Point No. 3:** - What Order?

12) My answers to the points as stated below

a) **Point No. 1:** - In affirmative.

b) **Point No. 2:** - See the final order.

c) **Point No. 3:** - As per final order, for the following reasons: -

REASONS

13) **Point No. 1:** - During course of arguments the Learned Counsel for the Complainant/Appellant has appeared before this Authority and submitted that the husband of the Appellant Late Hussain Khan was the consumer under 2nd Respondent having the installation bearing RR No. 8SP-1431. He found there was a glaring defect in the running of the meter thereby, requested for inspection. Consequently, the JE of 2nd Respondent inspected the installation at the spot on 25.07.2017 and taken away the meter for checking its accuracy. Accordingly, as a result the Department raised a short claim due to no display/MNR and issued a short claim notice to the consumer dated 14.12.2018 calling upon the consumer to pay a sum of Rs. 8,65,072/- which purported to have covered the period from 01.07.2016 to 24.08.2017. Again, the meter was replaced on 24.08.2017. But the Appellant is not liable to pay any amount to the 2nd Respondent as per short claim notice because the Appellant has already paid a total sum of Rs. 3,46,000/- for the controversial period as claimed in the short claim notice. But the 1st Respondent has not applied its judicial mind,

blindly passed the impugned order which is unsustainable in the eye of law.

- 14) Further he submitted that it is pertinent to note that, in response to the number of complaints made by the consumer regarding irregularities committed by the Licensee company an enquiry was held headed by the then Executive Engineer (Ele) by name Sri K. Shivanna who conducted the inquiry and submitted final investigation report on 18.10.2019. The said report is shown in Annexure-C. The same Officer took over the charge of Chairperson of 1st Respondent CGRF and passed final order with regard to the same RR number belonging to the Appellant. Further it is pertinent to note that in the investigation report dated 18.10.2019, the Investigating Officer had found that the bill amount claimed by the 2nd Respondent for a sum of Rs. 8,65,000/- depending upon fake and fictitious data and the officials of BESCOM and meter testing staff have committed fraudulent acts. Surprisingly the same person (Authority) after taking over the charge of Chairperson of the office of the 1st Respondent passed impugned order stating that the Consumer is liable to pay of Rs. 4,17,922/- which is not sustainable under law. Considering all these facts and circumstances of the case the Learned Counsel of

the Appellant prays to allow the appeal by setting aside the order of the 1st Respondent in the interest of justice and equity.

- 15) In support of his arguments, he has furnished copy of the impugned order passed by the 1st Respondent in case No. CGRF 11/2019-20, a copy of the short claim notice dated 14.12.2018 and a copy of the objections filed by the Petitioner. He further filed calculation memo dated 08.11.2021 and also three documents that are a copy of the detailed report submitted by the 2nd Respondent to this Authority dated 08.07.2021 (Annexure-A), the copies of month wise demand and collection parameters (Annexure-B) and the final investigation report dated 18.10.2019 (Annexure-C).
- 16) During the course of arguments, the 2nd Respondent has submitted that, on 24.08.2017 the meter testing staff has inspected the installation RR No. 8SP-1431 and found the meter was not recording and reported that meter “faulty and no display”. Based on this report the Licensee company raised a supplemental claims for the period 01.07.2016 to 24.08.2017 amounting to Rs. 8,65,072/- on the basis of average energy consumption of the immediately preceding 3 months. Short claim notice is also served on the consumer calling upon him to place his objections. But the objections submitted by the consumer is not accepted by the

Licensee Company thereby, the consumer had filed a complaint before the 1st Respondent. Consequently, the 1st Respondent after considering all the facts and circumstances of the case and also on the basis of documentary evidence furnished by both the parties has passed impugned order dated 03.03.2021 by allowing the complaint in part and directing the consumer to pay a sum of Rs. 4,17,922/- towards short claim amount. But aggrieved by the said order he has come up with the appeal.

- 17) Further he submitted that as per consumer letter dated 21.12.2018 to the Managing Director, BESCO, they have handed over DD's/Cheque bearing No. 075775, 075608 and 075367 to the area meter reader as adverting to Conditions of Supply of Electricity Regulation 29.04 and he has misused the DD's given by the Complainant for which a departmental enquiry is ordered to be held by the disciplinary Authority, the said enquiry is going on. Even as per the observations made by the 1st Respondent a disciplinary action has been initiated against the officials which is also going on. Further submitted the Consumer has already paid amount of Rs. 3,46,000/- which is adjusted towards regular bills. Short claim calculated based on the difference between the recorded reading in the system (15.06.2017) and actual meter

released date in the field as per meter downloaded data. Hence the consumer has to pay disputed amount of Rs. 4,17,922/-. In support of his arguments, he has furnished the copies of downloaded data.

- 18) Basing on the oral submissions of the Appellant as well as the 2nd Respondent and also on perusal of the available records before this Authority, now this Authority has to decide whether the observations made by the 1st Respondent in the impugned order is in accordance with law or not.
- 19) Prior to that, this Authority has to decide whether the Investigating Officer who had inquired the correctness of the meter and other auxiliary issues pertaining to the RR No. 8SP-1431 and submitted the final report (as per Annexure-C filed by the Petitioner) can be an Authority to adjudicate the same issue in the capacity of Chairperson of the 1st Respondent CGRF. In this regard, the 2nd Respondent has not submitted his defense either by way of filing objections or at the time of arguments. Even he has not disputed this contention taken by the Petitioner.
- 20) It is settled position of law that, one of the fundamental principles of natural justice is that “no man shall be a judge in his own cause” this principle consists of 7 well recognized facts:
 - 1) the adjudicator shall be impartial free from bias,
 - 2) the adjudicator shall not be the prosecutor,

- 3) the Complainant shall not be an adjudicator,
- 4) a witness cannot be the adjudicator,
- 5) the adjudicator must not import his personal knowledge of the facts of the case while inquiring into charges,
- 6) the adjudicator shall not decide on the dictates of his superiors or others,
- 7) the adjudicator shall decide with reference to materials on record and not reference to extraneous material or on extraneous considerations,

if any one of these fundamental rules is breached, the inquiry will be vitiated. That means a person who has been an inquiry officer cannot subsequently be the prosecutor or a judge, he must be impartial free from bias.

21) In the present case on hand, the Inquiry Officer who had inquired about the accuracy of the meter belonging to the Appellant and submitted final investigation report had also discharged his duties as a chairperson of the 1st Respondent/CGRF who is none other than a decision making Authority or acted as an Adjudicator, which is apparently against to the principles of natural justice.

22) This view of mine is supported by the decision rendered by Hon'ble Supreme Court of India reported in Union of India & Others Vs Ram Lakhan Sharma in Civil Appeal No. 2608/2012, in which the Hon'ble Supreme Court has given findings as: -

“It is therefore, crystal clear that the Inquiry Officer acted himself as a prosecutor and judge in the said disciplinary enquiry against the Writ Petitioner. From this admitted fact it may not be

wrong to infer that there were no fair procedures in the disciplinary proceedings as a result of which principle of natural justice was undisputedly denied to the Writ Petitioner.'

In another case in State of Uttar Pradesh and Others Vs Saroj Kumar Sinha, 2010 (2) SCC 772, in this case the Hon'ble Supreme Court of India had laid down that Inquiry Officer is a quasi-judicial Authority he has to act as independent adjudicator. Further, held that the Inquiry Officer has to be wholly unbiased, the rules of Natural Justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done.

- 23) Considering all the facts and circumstances of the case, the records placed before this Authority and also basing upon principles of Natural Justice, I hold that the impugned order passed by the 1st Respondent lacks bonafides. The 1st Respondent while adjudicating the matter pending before him ought to have applied his judicial mind before passing orders when he was well aware about, that he himself had prepared final investigation report pertaining to RR No. 8SP-1431 and the report is also a part of evidence. Apart from that if it has come to his knowledge that he has himself held enquiry, he shall record his findings and pass orders suitably seeing the matter in dispute ought to be dealt with by another CGRF. Because the proceedings before the 1st

Respondent are quasi-judicial in nature and the 1st Respondent is in the position of an independent adjudicator and is obliged to act fairly and impartially. The Authority exercises quasi-judicial power has to act in the good faith without bias in a fair and impartial manner. But the 1st Respondent failed to follow the principles of natural justice, thereby, the impugned order is not sustainable under law as it is against to the principles of Natural Justice and liable to be set aside. With this, I answer Point No. 1 in affirmative.

- 24) **Point No. 2:** - As per the discussions made herein above by this Authority and hold that the 1st Respondent has not followed legal principles while passing impugned order, this point is not taken up for discussion since, it connects to merits of the case.
- 25) **Point No. 3:** - As per the discussions made in Point No. 1 & 2, I hold that the matter has to be remanded back to the 1st Respondent to proceed in accordance with law by following the observations made by this Authority while answering to Point No. 1. With this, I proceed to pass the following order: -

O R D E R

No. OMB/B/G-428/2021/D-06

Dated: 19.01.2022

The order passed by the First Respondent in case CGRF/11/2019-2020, CP/CGRFBU/BWC/7069-71 dated 03.03.2021 is hereby set aside.

Consequently, the matter is remanded back to the 1st Respondent to proceed further in accordance with law as per the observations made while answering to Point No. 1.

Accordingly, the appeal is stood disposed.

Sd/-
(R. Sharada)
Electricity Ombudsman.

- 1) Smt. Parveen Taj,
W/o. Late Hussain Khan,
#4, North Street,
Neelasandra,
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- 2) Sri S.A. Wajid, Advocate,
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- 5) PS to Hon'ble Chairman, KERC
- 6) PS to Hon'ble Member (M), KERC
- 7) PS to Hon'ble Member (R), KERC
- 8) PA to Secretary, KERC.