

BEFORE THE ELECTRICITY OMBUDSMAN

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

Present: S.S Pattanashetti,
Electricity Ombudsman,

Case No. OMB/M/G-337/2019

Dated 11/10/2019

In the matter of

Shri T.N Malleshappa,
Retired Professor,
“Artha”, K.C Layout,
Jannapura, Bhadravathi-577301,
Shivamogga District. -

Appellant

Vs

- 1) The Assistant Executive Engineer (Electrical),
O & M Urban Sub-Division, MESCOM,
Bhadravathi,
Shivamogga District.
- 2) Chairman, Consumer Grievance Redressal Forum/(CGRF)
MESCOM, Shivamogga District/
Superintending Engineer (Ele.)
MESCOM, O & M Circle,
Near Railway Station,
Shivamogga. -

Respondents

- 1) This Application/Complaint is filed before this Authority, by Sri T.N Malleshappa (Appellant/Complainant), under the provisions of Clause 21.2 of the KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2004, in Form ‘B’ challenging the order No. ಮವಿಸಕಂ/ಗ್ರಾ.ಕು.ನಿ.ವೇ/09/2019/468-76 dated 16-04-2019 of CGRF, Shivamogga District, by inter-alia seeking to reverse the back billing charges paid to the Respondent-1/AEE.

- 2) Brief facts, which are relevant to the case on hand, as claimed by the Appellant/Complainant, are as follows:
- a) The Appellant/Complainant has got 1 KW power supply from MESCOM, Urban Sub-Division, Bhadravathi through R.R No. T.P 7729 on 23-02-2015 to his residence and thereby paying the electricity bill regularly.
 - b) It is further stated that during the month of January 2018, MESCOM authorities inspected the T.P Meter and informed that the usage of electricity load has increased and also informed to pay Rs. 2,000/-. The Appellant/Complainant is paying the electricity bill regularly.
 - c) It is further stated that on the basis of report submitted by the LT Rating staff of MESCOM, dated 16-04-2018 there is an excess load of electricity consumption than the sanctioned load for the last six months during peak demand (P.D) and on 27-04-2018 informed to pay Rs 15,488/- towards back billing charges and to file objections, if any in this regard. In response to this, the Appellant/Complainant has filed objections on 24-05-2018 stating that he had obtained T.P from MESCOM on 23-02-2015 for construction of his house. At that time the officials of MESCOM, had instructed him orally that the T.P should be renewed every 28 days and the usage of electricity should not exceed 70 units in these 28 days. As per these instructions he was renewing his T.P within 28 days and his usage was less than 70 units for these days. As per this calculation, he could have utilized 2950 units upto that time, but he had actually utilized 1325 units only. It is further stated that when such is the case, it is incorrect to state that there is an excess usage of electricity and requested the Respondent-1/AEE to withdraw the provisional notice. The Respondent-1/AEE passed final order on

31-05-2018 after considering the objections of the Appellant/complainant, stating that the sanctioned load to TP 7729 was 1KW and after going through the last 6 months average, usage by the Appellant/complainant was 10.19kws more than the sanctioned load and as per KERC (Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka – 2006) Chapter-X, 42.05 under unauthorized increase in load BBC was prepared and he has to pay Rs 15,488/-.

- d) Aggrieved by the final order dated 31-05-2018 passed by the Respondent-1/AEE, the Appellant/Complainant approached the Respondent-2 CGRF Shivamogga for redressal of his grievance. The Respondent-2 has passed an order dated 16-04-2019 without taking into consideration the facts and objections filed by the Appellant/Complainant. It is further stated that being aggrieved by the order passed by Respondent-2, the Appellant/ Complainant has approached this authority seeking justice to reverse the back billing charges as claimed by the Respondents.
- 3) Both the parties were informed vide this office letter No. OMB/M/G-337/2019/D-1281 dated 22-05-2019, regarding availability of provisions in Sub-Regulation 1 of Regulation 20 of KERC (CGRF & Ombudsman) Regulations, 2004 for settlement through conciliation and mediation and to appear before this Authority on 04/06/2019. However, they have not availed the benefit of the said provision. The case was listed for hearing on 04/06/2019, 18-06-2019, 24-06-2018 08-07-2019 & 15-07-2019.
- 4) In the parawise replies dated 17-06-2019 filed by the Respondent-1/AEE, it is stated that the Appellant/Complainant has applied for

temporary power supply on 16-02-2017 and after collecting the prescribed fee 1 KW of power supply has been sanctioned on 23-02-2017 and thereafter the same has been renewed every 28 days. After completion of the construction work of the building and on the request made by the Appellant for sanction of permanent power supply of 2 KW, by collecting Security Deposit power supply has been provided through RR No. 48373. It is further submitted that the Consumer in spite of getting permanent power supply, has also utilized temporary power supply for his requirement. It is further submitted that the LT Rating Sub-Division staff has inspected the temporary power supply meter on 16-04-2018 and after considering calibration and rating, it is noticed that there is an excess load of electricity consumption and submitted report to take action as per KERC (Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka) Regulations, 2004. In pursuance to this report, provisional notice dated 27-04-2018 has been issued demanding to pay Rs15,488/- towards provisional back billing charges for the excess load of electricity consumed. It is further submitted that, as the objections dated 24-05-2018 filed by the Consumer to the provisional notice were not proper, final back billing order dated 31-05-2018 has been issued to pay the amount. The consumer has written a letter dated 08-06-2018 to the Managing Director, MESCOM refusing to pay the amount and to cancel the back billing charges. Further, the consumer without paying the back billing charges has filed a complaint before the CGRF-Shivamogga District for redressal of his grievance. It is further submitted that the CGRF, MESCOM, Shivamogga District after conducting enquiry and taking into consideration facts of the case, has

passed an order dated 26-02-2019 that the Consumer is liable to pay the demanded back billing charges. In pursuance to this, the consumer has paid the back billing charges on 08-05-2019.

- 5) In the rejoinder dated 24-06-2019 to the parawise replies filed by Respondent-1/AEE the Appellant/complainant has stated that the temporary permit was obtained by him on 23-02-2015 at the time of construction of his house and not on 23-02-2017 as stated by the Respondent-1/AEE. It is true that on 20-06-2018 he had obtained permanent power supply through RR No 48373 for 2 KWs. However, it is not true that he continued the temporary power connection, as it is not possible to have 2 types of power connections through the same meter.
- 6) Respondent 1/AEE in his submission dated 01-07-2019, has clarified that it is true that the Appellant/complainant has obtained temporary connection on 23/02/2015. As 2 years were completed after obtaining temporary connection the same was renewed on 23-02.2017 as per KEREC Clause 12.04(ii). Hence it is stated in the parawise replies and submission before the CGRF that the temporary connection was given on 23-02-2017.
- 7) Appellant/complainant in his submission dated 15-07-2019, at the time of hearing has stated that, the final Back Billing Charges (BBC) order passed by Respondent-1/AEE mentions that BBC notice has been issued as per KEREC (Conditions of Supply of Electricity of Distribution Licenses in the State of Karnataka - 2006) chapter X, Clause 42.05 under unauthorized increase in load. But this is not the relevant provision of law for unauthorized increase in load. Clause 42.05 pertains to “unauthorized Extension of Supply”, which is not

relevant to the facts of the present case. The correct provision of law is Clause 42.01. Clause 42.06(e) describes the procedure to be followed for Clause 42.01. It says “the Assessing officer/Authorised officer shall draw mahajar at the time of inspection when such prejudicial use/theft of electricity is detected. The mahajar shall be drawn in the presence of the consumer or his representative along with 2 other witnesses, who shall sign the mahajar report. One copy of such report shall be handed over under acknowledgment of the consumer or his representative”. This procedure has not at all been followed. The Appellant/ complainant further goes on to draw the attention to Clause 42.07(4) which states that the Assessment officer shall indicate in the Assessment order, the provision of appeal under Clause 44.00. This procedure too has not been followed by the Respondent-1/AEE. As per amended version vide notification No KERC/CoS/D/07/08 dated 14-03-2008 of Clause 44.04 Appellate Authority for this case is SE Chamundeshwari Electric Supply Corporation (CESC). The SE, Shivamogga should not have entertained the Appeal against the Assessment order passed under clause 42.01. Hence, the order passed by CGRF, Shivamogga District, is without jurisdiction.

- 8) The Respondent-1/AEE remained absent for the hearing held on 08-07-2019 and 15-07-2019. He has neither sought any adjournment nor filed any counter to the submissions made by the Appellant/complainant.
- 9) I have perused the Appeal memo filed by the Appellant/complainant, gone through the parawise replies furnished by the Respondent1/AEE, the rejoinder filed by the Appellant/complainant, and further submissions made by the parties. It is a fact that the Respondent-1/AEE

has mentioned the final BBC order is being made under Clause 42.05 unauthorised increase in Load, of KERC (Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka - 2006). The proper and correct Clause for unauthorized increase in Load is 42.01 and not 42.05. Even accepting the fact, that there has been a misquote of clause, the Assessing officer/Authorised officer should have drawn mahajar at the time of inspection, in the presence of the consumer or his representative and served a copy to the consumer or his representative as required under Clause 42.06(e). As per Clause 42.07(4) the Assessing officer should have indicated in the provisional order the provision of appeal under Clause 44.00. All these formalities have not been followed by the Respondent-1/AEE. The CGRF Shivamogga is not the Appellate Authority as per Clause 44.04 (Amended version vide Notification No. KERC/COS/D/07/08 Dated 14-03-2008). They should not have entertained the Appeal and dismissed it saying that it does not come under their jurisdiction or purview. Instead, they have heard the complaint, and passed an order rejecting the complaint. The impugned order of CGRF Shivamogga, the report of LT Rating staff and the provisional and final BBC order passed by Respondent-1/AEE suffer from the above lacunas.

In view of the foregoing paras, I proceed to pass the following order

No. OMB/M/G-337/2019/D-1364

Dated 11-10-2019

O R D E R

1. The order of CGRF, Shivamogga bearing No. ಮವಿಸಕಂ/ಗ್ರಾ.ಕು.ನಿ. ವೇ/09/2019/468-76 dated 16-04-2019 is set aside.
2. The report of the L.T Rating staff dated 16-04-2018, the provisional notice and final BBC order passed by Respondent-1/AEE dated 27-04-2018 and 31-05-2018 respectively are also set aside.
3. The BBC of Rs 15,488/- paid by the Appellant/complainant should be returned to him within 90 days from the date of this order, or adjusted to the future electricity consumption charges of the Appellant/Complainant.

Sd/-
(S.S Pattanashetti)
Electricity Ombudsman.

- 1) Shri T.N Malleshappa,
Retired Professor,
“Artha”, K.C Layout,
Jannapura, Bhadravathi-577301,
Shivamogga District.
- 2) The Assistant Executive Engineer (Electrical),
O & M Urban Sub-Division, MESCOM,
Bhadravathi,
Shivamogga District.
- 3) Chairman, Consumer Grievance Redressal Forum/(CGRF)
MESCOM, Shivamogga District/
Superintending Engineer (Ele.)
MESCOM, O & M Circle,
Near Railway Station,
Shivamogga.
- 4) PS to Hon’ble Chairman, KERC
- 5) PS to Hon’ble Member (M), KERC
- 6) PS to Hon’ble Member (R), KERC
- 7) PA to Secretary, KERC.
- 8) Chairperson of all CGRF’s in the State.