

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/G/G-385/2019
Dated 12/02/2020

In the matter of

Sri Khandoji Rao,
Harvapur Village,
Benchamardi Post,
Maski Taluk,
Raichur District.

Represented by:

Sri S Mahaboob,
H.No. 13-2-2/195,
Arjunappa Colony, Yeramaras Camp,
Raichur – 584135.
Raichur District.

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Vs

Appellant

- 1) The Assistant Executive Engineer (Electrical),
O & M Sub-Division, GESCOM,
Maski,
Raichur District.
- 2) Chairperson, Consumer Grievance Redressal Forum/(CGRF)
Raichur District,
Superintending Engineer (Ele),
O & M Circle, GESCOM,
Near Basaveshwara Circle Opp. LIC Office,
Raichur – 584101.

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Respondents

- 1) This Appeal/Complaint is filed before this Authority, by Sri Khandoji Rao, (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. ಅಅ/ಉಲೆನಿ/ಹಿಆಸ/19-20/4717-25, dated 23-12-2019 of CGRF, Raichur District, by inter-alia seeking the following reliefs:

Withdraw Rs. 20,324/- from bill and penalty as per (Standards of Performance) SOP.

- 2) Brief facts, which are relevant to the case on hand, as claimed by the Appellant/Complainant are as follows:
- 3) The Appellant/Complainant is using electricity for 13 HP floor mill and is paying electricity bills regularly. In the month of October 2019, he received a bill for Rs. 21,820/- with arrears of Rs. 20,324/- though there was no arrears. The Appellant/Complainant represented to the AEE to furnish details of Rs. 20,324/- which was included in the bill as arrears. The Respondent-1/AEE did not respond. On 04-11-2019 the Appellant/Complainant filed a complaint before the CGRF Raichur District. The CGRF Raichur District after hearing the complaint passed an order stating that the back billing charges imposed is as per rules and is in order. Aggrieved by the CGRF order an appeal is filed before this authority. According to Clause 29.03 of KERC Conditions of Supply of Electricity (COS), for any supplemental claims, Licensee shall serve a Provisional Assessment Order. But the Respondent-1/AEE has not served any Provisional Assessment Order to the consumer and Rs. 20,324/- is directly included in the energy bill for the month of Oct 2019. According to Respondent-1/AEE notice is said to be served on the consumer on 17-09-2019. But the consumer has not received the same and there is no acknowledgment with the Respondent-1/AEE for having served the notice. Notice has to be served according to KERC

Conditions of Supply of Electricity (COS) Clause 40.00. According to KERC Conditions of Supply of Electricity (COS) Clause 27.03 (iii) testing staff shall draw mahajar. But the testing staff has not drawn any mahajar in this case. The Respondent-1/AEE has not served any notice i.e., Provisional Assessment Order or Final Assessment Order and given any opportunity to the consumer for personal hearing and included amount of Rs. 21,820/- in the energy bill. In WP No 9171 of 2009 dated 08-04-2009 in M.P. Sreenath Gupta V/s AEE the Hon'ble High Court of Karnataka has ordered that any irregularities in procedure of demand of back billing charges is liable to be quashed. It is requested to quash the back billing charges order of Rs. 21,820/-.

- 4) Both the parties were informed vide this office letter No. OMB/G/G-385/2019/D-1413 dated 31-12-2019, regarding availability of provision of 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 10-01-2020. However, they have not availed the benefit of the said provision. The case was listed for hearing on 10-01-2020 and 28-01-2020.
- 5) The Respondent-1/AEE has made his submissions through his letter dated 23-01-2020. He has stated that installation HWP-3 belonging to Sri Khandoji Rao native of Harvapur was inspected by the Meter Testing Sub Division, Sindhanur on 06-08-2019 and it was found that the meter was running minus 70.18% slow and they imposed a back billing charges of Rs. 20,305/-. The meter of the consumer has been tested with Accu Check meter and it was found that the meter was running slow. As per ledger extract for the months of January 2014, February 2014 and March 2014 average consumption of electricity was

418 units. This average consumption has reduced to 137 units in the future months. The imposition of back billing charges is as per rules.

6) Perused the appeal memo dated 28-01-2020 filed by the Appellant/Complainant and also the submissions made by the Respondent-1/AEE along with all the Annexures attached to them and also the arguments put forth by both the contesting parties at the time of hearing. It is the contention of the Respondent-1/AEE that the installation of the Appellant/Complainant bearing RR No. HWP-3 was inspected by the GESCOM Meter Testing Sub Division Sindhanur on 06-08-2019 and it was found that the meter was running 70.18% slower. On the report of the AEE Meter Testing Sub Division dated 04-09-2019 a letter was issued to the Appellant/Complainant dated 17-09-2019 referring to the report of the AEE Meter Testing Sub Division and asking the consumer to pay Rs. 20,305/- within 7 days from the date of receipt of the letter. The Appellant/Complainant says that this letter was not received by him. The procedure regarding service of notice is contained in Clause 40.00 of KERC, Conditions of Supply of Electricity of Distribution Licensees in The State of Karnataka (COS). The same is reproduced here below: -

40.00 SERVICE OF NOTICE

Any notice to the Consumer by the Licensee shall be deemed to be duly served by the Licensee if it is: -

- a) Sent by registered post, under certificate of posting, by courier or other similar means or
- b) Delivered by hand to the person residing at the Consumer's address
- c) Affixed at a conspicuous part of such premises in case there is no person to whom the same can, with reasonable diligence, be delivered.

The above procedure has not been followed in the present case. The Respondent-1/AEE says that the notice was sent by ordinary post. In the absence of proof of service of notice, it has to be held that notice was not served upon the Appellant/Complainant.

The procedure regarding supplemental claims by the Licensee is contained in Clause 29.03 of KEREC, Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka (COS).

The same is reproduced here below: -

29.03 Supplemental claims: For preferring the supplemental claims, the Licensee shall serve a provisional Assessment order with 15 days' notice to the Consumer to file his objections, if any, against the provisional Assessment order on account of faulty meter or short claims caused due to erroneous billing and obtain his reply. After considering the objections of the Consumer, the Licensee shall issue the final order. The Consumer shall be intimated to make the payment within 15 days of the date of intimation, falling which, the power supply to the installation shall be disconnected and such amount shall be deemed to be arrears of electricity charges. The Licensee shall indicate in the final order, the provisions of K.E.R.C. (Consumer Grievance Redressal Form and Ombudsman) Regulations, 2004.

Even this procedure has not been followed by the Respondent-1/AEE in the present case.

The report of the AEE LT Rating Sub Division mentions that there has been a slow recording of the meter to the extent of 70.18%. As per Clause 27.03 (iii) the procedure to be followed for testing of meters is as follows: -

27.03 In the event of test being undertaken by the Licensee periodically as per clause 26.07 of these Conditions using an electronic type testing equipment preferably with a facility of a printer attached to it, the following procedure shall be adopted.

- (i) When the meter is found to be slow beyond the permissible limits, the Consumer shall be liable to pay the difference at normal rates based on the percentage error, for a period of not more than 6 months prior to the test, due regard being paid to the conditions of working, occupancy etc., during this period and up to the date of replacement or rectification of the meter.
- (ii) When the meter is found to be fast beyond the permissible limits, the Licensee shall adjust the excess amount collected based on the percentage error for a period not more than 6 months prior to the date of test, within one month of the date of test by giving credit to the account of the Consumer. In case of delay in adjustment of the excess amount, the Licensee shall pay interest at 1% per month on actual number of days of delay on the amount due for adjustment.
- (iii) The testing staff of the Licensee shall draw a mahazar and obtain the signature of the Consumer or his representative for witnessing the test and also agreeing to pay the back billing charges in case of slow recording of the meter.
- (iv) If the Consumer or his representative refuses to sign the mahazar, the error in the meter need not be adjusted or meter removed and referred to the “Third Party Agency” by the Licensee for testing the meter on the spot who shall test the meter within a period of one week.

The Respondent-1/AEE accepts that no mahazar was drawn at the time of testing of the meter.

- 7) The Respondent-1/AEE has submitted ledger extract of the meter in his submission dated 23-01-2020 received in the office on 27-01-2020. As can be seen from the ledger extract submitted for the period from January to March 2014 the average consumption of electricity is 418 units and average consumption of electricity for the period after March 2014 up to August 2019 is 137 units per month. These figures do not in any way justify the slow recording of the meter to the extent of 70.18%.

Even in the order of the CGRF Raichur District dated 23-12-2019, the Forum has accepted that there has been a procedural lapse by the Respondent-1/AEE in not following Clause 29.03 and 40.00 of Conditions of Supply of Electricity (COS), even then the Forum has come to a decision that the back billing charges imposed is as per rules and asked the Appellant/Complainant to pay the back billing charges.

8) The Appellant/Complainant has also drawn reference to the order of Hon'ble High Court of Karnataka in WP No. 9171/2009 decided on 08-04-2009 wherein the Hon'ble Court has said that: -

“13. When once an opportunity is accorded to the consumer to respond to the provisional assessment order, it is very necessary that the order should be one which gives all details about the matter of arriving at the demanded amount and not a cryptic or non-speaking order without reasons to which the consumer will not be able to respond. The requirement of providing opportunity to the consumer to offer his explanation and thereafter the authority to hear the petitioner, consider the objections and then to pass order cannot be an empty formality as unless a provisional order indicates the reasons and the circumstances under which the amount is demanded and arrived at, it will not be possible for the consumer to respond to the provisional demand.”

The Appellant/Complainant has also drawn reference to the order of Hon'ble High Court of Karnataka in WP No. 9271/2008 decided on 18-11-2008 wherein the Hon'ble Court has said that: -

“12. An opportunity of hearing is not an empty formality but one which is an enabling provision in favour of a consumer, particularly, in the wake of back billing demand which is quasi criminal in nature; in the sense, that there is a misuse or theft of electricity supplied by the company and in the manner of use of the power supplied by the company. Therefore, before a demand of this nature is confirmed in terms of the final assessment order after the provisional assessment order, an opportunity which is contemplated under the statute should necessarily be accorded and if not the order automatically suffers from this defect.”

The report of the AEE Meter Testing Sub Division Sindhanur dated 04-09-2019 and also the notice issued by Respondent-1/AEE dated 17-09-2019, suffer from the observations made by the Hon'ble High Court of Karnataka in the above two judgements.

9) In view of the foregoing paras the following order: -

No. OMB/G/G-385/2019/D-1430

Dated 12-02-2020

O R D E R

- 1) The order of the CGRF Raichur District bearing No. ಅಅ/ಉಲೆನಿ/ಹಿಆಸ/19-20/4717-25, dated 23-12-2019 is set aside.
- 2) The notice issued by Respondent-1/AEE dated 17-09-2019 is set aside.
- 3) The report of the AEE Meter Testing Sub Division Sindhanur dated 04-09-2019 is also set aside.

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

- 1) Shri Khandoji Rao,
Harvapur Village, Benchamardi Post,
Maski Taluk,
Raichur District.
- 2) Sri S Mahaboob,
H.No. 13-2-2/195,
Arjunappa Colony, Yeramaras Camp,
Raichur – 584135.
- 3) The Assistant Executive Engineer (Electrical),
O & M Sub-Division, GESCOM, Maski,
Raichur District.

- 4) Chairperson, Consumer Grievance Redressal Forum/(CGRF)
Raichur District,
O & M Circle, GESCOM,
Near Basaveshwara Circle Opp. LIC Office,
Raichur – 584101.
- 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.
- 9) Chairperson of all CGRF's in the State.