

**Before the Ombudsman
Karnataka Electricity Regulatory Commission
Bangalore**

**Present: S.D.Ukkali
Ombudsman
Case No.OMB/B/G-57/09/8011
Dated 31-3-2010**

M/s.Jai Benzo Derivatives Pvt. Ltd.,
410, Commerce House,
9/1, Cunningham Road,
BANGALORE-560052
(Represented by Mr.N.B.Ramesh
Authorised Representative)

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Complainant

Vs

Bangalore Electricity Supply Company (BESCOM)
Represented by its
1. Asst.Executive Engineer(Ele)
BESCOM, Malur Sub Division,
MALUR-573130

2. The Consumer Grievance Redressal Forum (CGRF)
BESCOM
Central Stores Premises,
Near ESI Hospital,
Rajajinagar,
BANGALORE-560010

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Respondents

I. This is a representation filed by the above named Complainant under the provisions of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 directed against the Order dated 23.01.2009 passed by the 2nd Respondent in its file No.CGRF/26/2008/2783.

II. The brief facts of the case are as follows:

The Complainant, M/s.Jai Benzo Derivates Pvt.Ltd., is the registered consumer of R.R.No.MP 1019 at industrial area, Malur. The installation was serviced on 18.1.1999 with a sanctioned load of 65 HP. The Complainant has stated that electricity was utilized by paying the bills regularly. The Meter Testing staff of then KPTCL who visited the installation on 4.4.2000 for a periodical rating found that the meter was recording 63.27% slow and gave a report to the AEE, KPTCL Sub-Division, Malur, who, in turn, issued a notice bearing No.650 dated 20.5.2000 demanding a back bill of Rs.1,63,917/- and disconnected the installation without giving an opportunity to the Complainant. An amount of Rs.41,000/- being 25% of the back billed amount was paid and the installation was re-connected. Thereafter, the Complainant filed an appeal with the 1st Appellate Authority of KPTCL i.e the Superintending Engineer, KPTCL, Kolar. The Appellate Authority vide Order No.SEE/DCA/EEE/Appeal/784-89 dated 31.7.2002, while disallowing the appeal petition, ordered that the BBC bill issued by the Respondent Licensee for the slow recording of the meter as per the MRT Rating report is to be revised for a period of six months prior to date of inspection and to continue up to date of rectifying the fault and that the Complainant is liable to pay the bill duly adjusting the 25% of the disputed amount already paid. The installation was again disconnected for 30 days.

The Complainant, after paying another 25% of the BBC, has filed an appeal with the 2nd Appellate Authority of KPTCL (the Chief Engineer, KPTCL, BRAZ, Bangalroe) vide letter No.227/GN dated 23.11.2002 and got the installation re-connected. The Complainant has stated that no action was taken either by KPTCL or by the BESCO (the Successor Entity) on the 2nd appeal filed. On 7.7.2005, a notice was received by the Complainant from the 1st Respondent informing that the 2nd appeal has been disallowed and that the Complainant was asked to pay the BBC. As the amount was not paid, the installation was again disconnected. When the Complainant approached the Director(Technical) of BESCO on 25.8.2005 with a representation requesting him to give a decision on the 2nd appeal and to re-connect the installation, the Director(T) ordered for re-connection of the installation by addressing a letter to the 1st Respondent. The Complainant did not pay the bill as no relief was provided by the BESCO on the

BBC. Subsequently, the 1st Respondent disconnected and dismantled the installation and issued "A" Form Notice for the recovery of arrears vide letter dated 12.9.2006.

Aggrieved that the matter was not settled by the BESCO, the Complainant filed a complaint before the 2nd Respondent on 23.10.2008 to settle the grievance. The 2nd Respondent passed the order in two parts. But in the 1st portion of the order, the 2nd Respondent upheld the order passed by the 1st Appellate Authority, thereby denying the request of the consumer. The grievance of claiming interest was settled in the 2nd portion of the order to the satisfaction of the Complainant.

Not satisfied with the 1st part of the order passed by the 2nd Respondent, the Complainant has filed this Representation before this Authority and has prayed for the following relief:

III.

P R A Y E R

The Complainant has prayed that the erroneous back billing should be rectified and installation be back billed only for 60 days.

IV. Settlement by Agreement

Both the parties were informed to explore the possibilities of settlement by conciliation and mediation by this office letter No.OMB/B/G-57/09/7182 dated 5.10.2009. Both the parties were heard on 9.2.2009. During the hearing also, efforts were made to reach an agreement by conciliation and mediation. However, no accord could be reached and, therefore, it was decided to pass an award after hearing.

V. Contention of the 1st Respondent:

The 1st Respondent in his parawise comments furnished vide letter No.AEE/MLR/SAF/1573/2009-10 dated 23.09.2009 has stated that the bill was revised due to slow recording of meter by 63.27% as per MT report dated 4.4.2000 and that

request letter addressed to SE(Ele) Kolar was not considered since the revised billing of 6 months previous to the date of rating to the date of change of meter was in order as per supply regulations and the same has been informed to the consumer. He has further stated that the notice for payment of Rs.163917 was served to the consumer vide letter No.AEE/MLR/650/2000-01 dated 20.5.2000 and the consumer has not paid this amount within 30 days and appealed to the SE (Ele), Kolar who has disposed the appeal vide letter NO.SE/E/DCA/Appeals/784-89 dated 31.7.2002. Hence the interest on belated payment has been claimed as per supply regulation and the consumer was asked to pay revised bill of Rs.163917 along with Rs.6309 vide letter dated 30.9.2002. The 1st Respondent has further stated that the order passed by the Superintending Engineer (Appellate Authority) vide letter No.SEE/DCA/EEE/Appeals/784-89 dated 31.7.2002 was upheld by the 2nd Respondent and as per the 2nd portion of the order the interest was to be claimed for 120 days. Accordingly, the Complainant is liable to pay the back billing charges as per the order passed by the 2nd Respondent. He requested for rejection of the Complainant's request.

VI. Discussions and Analysis:

1. This is a case made on 4.4.2000, when the law applicable was governed by Karnataka Electricity Reforms (KER) Act, 1999 and the rules and regulations framed under this Act. The KEB Electricity Supply Regulations (ESR) were prevailing then. The authorities of the Licensee had power to deal with disputes of meter accuracy also. There were two Appellate Authorities then in KPTCL, the 1st and the 2nd Appellate Authorities. These were continued further in the ESCOMs also till the day the Electricity Act 2003 came into force (10.06.2003)

2. Accordingly, the 1st Appellate Authority, the Superintending Engineer of KPTCL, Kolar, upon filing of the appeal by the consumer and after remittance of 25% of the back bill passed an order No.SEE/DCA/Appeals/784-89 dated 31.7.2002.

3. Not satisfied with this Order, the Complainant filed a 2nd appeal before the Chief Engineer, KPTCL, BRAZ, Bangalore being the 2nd Appellate Authority, which was in vogue at that time after paying another 25% of the back billing charges.

The 2nd Appellate Authority by not passing an order till 30th of June 2003 has erred and rendered the dispute unresolved.

4. It is interesting to note the legal turn things have taken after 10.6.2003, when the Electricity Act 2003 came into force. The Appellate Authorities have no jurisdiction on the disputes of meter accuracy, but have jurisdiction only on the cases made out under Section 126 of the Act and there is provision for only one Appellate Authority and, therefore, there is no existence of 2nd Appellate Authority.

5. The inaction by the 2nd Appellate Authority to settle the dispute kept the grievance of Complainant alive and made it fall into the lap of provisions of Electricity Act, 2003 to settle the grievance of the Complainant.

6. Any clarification / order by the Corporate office of the Licensee clarifying that the 2nd Appellate Authority does not exist under the law after 10th June 2003 and that the order of the 1st Appellate Authority has attained finality cannot be accepted. The 2nd Appeal has been legally admitted by the 2nd Appellate Authority but failed to pass an order and settle the grievance of the Complainant in time i.e. within 10.06.2003 (the day on which the Electricity Act 2003 came into force).

7. Therefore, this Authority has jurisdiction and this petition is maintainable and, hence, this Authority proceeds further to discuss the matter on merits and pass an award.

8) The installation was rated on periodical inspection on 4.4.2000. The provision relating to this activity was 28.02 of ESR and is reproduced hereunder:

“In the event of test being undertaken by the Board periodically under Rule 57(4) of the Rules, and the meter being found to be incorrect beyond permissible limits, such meter shall be calibrated or replaced by good one as the situation warrants. When the meter is found to be slow beyond permissible limits (when tested by MT/RT Division staff), the consumer is 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 upto the date of replacement or rectification of the meter

Note: The consumer is not liable to pay any penal charges if the revised consumption/demand exceeds the entitlement fixed for the installation.”

The Respondent Licensee was bound to follow these provisions. The testing report says that **“ R and B phase Meter indicators were not blinking under load condition. Power installation was inspected on complaint from O & M.**

Display parameter were explained to Representative present Sri V.R.Nair and Sri Suresh.

Meter tested and found to be recording – 62.48% slow.

Suspected Meter/CTs faulty.

Necessary Action may be taken as per ESR & Arrangements may be made to replace CT/Meter”

9) Based on this report, back bill was claimed. Subsequently, again, the meter was tested and replaced on 8.6.2010 with the following remarks:

“ R and B Phase indicators were not blinking. Meter tested and found to be recording 63.27% slow. (this test in connection with rating dated 4.4.2000) The CT’s NO.184, 710,1257 Kalpe 75/5A were replaced by new CTs

Make Kalpa. Ratio 75/5A.

Nos. B11864, 11847, 11865

Meter tested and found to be recording correctly. Necessary action may be taken as per ESR.

Sri Vincent Supervisor of the plant was present at the time of rating/inspection. Single phase lighting meter released and circuit merged with power meter”

VII. Findings

The Complainant has argued that the back bill ought to have been claimed for 60 days only, based on the details of down loaded data. **It is indicated in the test reports that R and B phase indicators were not blinking under load conditions. Suspected Meter/CTs faulty.** It is stated that the testing staff have suspected either CTs or meter to be faulty and they are not definite. The total of the R and B failure is stated to be working out only to 64 to 65 days and hence has prayed for back billing for 60 days only. It is not established by the tests properly that the back billing was justified for 9 months, as the failures of R and B phase are not continuous but intermittent. In order to compare the consumption details available for this installation before and after the periodical testing of the installation, the records are not available in full with the 1st Respondent.

The consumption from February 1999 till June 2000 and the consumption from January 2002 to December 2002 are only available as furnished by the 1st Respondent. During the period of prior six months of testing i.e. prior to 4.4.2000 and upto replacement of meter, the consumption during January 2000, February 2000, May 2000 and June 2000 are to be subnormal than the other months. Hence, keeping in the mind the provisions 28.02 that due regard be paid to the conditions of working, occupancy etc. it is reasonable to claim the back billing for these four months mentioned above.

The 1st portion of the order passed by the 2nd Respondent needs to be set aside.

Having regard to the discussion, analysis and finding, the following order is passed.

VIII.

O R D E R

1. The 1st portion of the order passed by the 2nd Respondent is set aside.
2. The back bill is to be claimed at the difference in normal rates based on the percentage error for the months of January 2000, February 2000, May 2000 and June 2000 only.

(S.D.Ukkali)
Ombudsman

1. M/s.Jai Benzo Derivatives Pvt.Ltd., 410, Commerce House, 9/1, Cunningham Road, Bangalore-560052
2. The Chairman, CGRF, BESCO, Central Stores Premises, near ESI Hospital, Rajajinagar, Bangalore-560010
3. The Asst. Executive Engineer, BESCO, Malur Sub Division, Malur-573130
4. The Managing Director, BESCO, K.R.Circle, Bangalore
5. PS to Hon.Chairman, KERC
6. PS to Hon.Member(H), KERC
7. PS to Hon.Member(S), KERC
8. PS to Secretary, KERC
9. Director(Tariff)
10. Deputy Director(Legal)
11. OCA