

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

**Present: S.D.Ukkali
Ombudsman
Case No.OMB/B/G-60/09/7792
Dated 11-02-2010**

Shri L.S.Ramalingaiah,
No.1781, D.M.Tower,
Opp.Family Mart,
J.P.Nagar 6th Phase,

BANGALORE

(Represented by Sri Tanvir Ahmed
Shariff, Advocate)

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Complainant

Vs

Bangalore Electricity Supply Company (BESCOM)

Represented by its

1. Asst.Executive Engineer(Ele)

S-6 Sub-Division,

BESCOM

J.P.Nagar,

Bangalore-560078.

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 through his Advocate, Sri Tanvir Ahmed Shariff, under the provisions of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 directed against the Order dated 29.06.2009 passed by the 2nd Respondent in its file No.CGRF/23/2008/257-262.

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

a) The High Tension electrical installation bearing RR No.S6HT77 belonging to the Complainant was serviced on 09.01.04 with a contract demand of 30KVA. This was raised to 70 KVA by sanctioning & servicing additional demand of 40 KVA on 1.8.2006. It is stated that the Complainant has been paying the bills regularly and using the electricity as per Rules.

b) On 28.8.2008, AEE, M.T.Division, BESCOM, Bangalore, conducted periodical inspection and rating of this installation and forwarded a report of rating to the 1st Respondent.

Based on this report, the 1st Respondent demanded a back bill at normal rates for 6 months for slow recording of the meter amounting to Rs.1,89,522/- (Rupees One lakh eighty nine thousand and five hundred and twenty two) only vide letter No.AEE(E)/S6/AAO/SA/2957 dated 10.09.2008.

c) This notice of back bill was objected to by the Complainant and objections were filed before the 1st Respondent on 18.09.2008 and subsequently lodged a complaint before the 2nd Respondent on 14.10.2008.

d) The matter was heard and it was argued before the 2nd Respondent that the back billing claim was not as per the provisions of the existing regulations and the meter was replaced without the 3rd party inspection. **This amounted to destruction of material evidence and was a cover-up by the 1st Respondent.** The contention of the Complainant was that the percentage of error shown and the period taken to review the bill was against the provisions of 27.03(1) of the Licensees' Conditions of Power Supply, which clearly suggests that due regard should be given to the conditions of working etc. The slow recording if at all was existing may be for various other reasons but not due to the faulty nature of the meter. The 1st Respondent has carried out some tests during September 2009 and again attributes this reading to faulty CTs. It is further argued that in spite of the pleadings, the 2nd Respondent passed an order by majority by two Members belonging to the Licensee as follows:

- e) ***"Under the circumstances stated above, the action taken by the sub-division in back billing the installation for slow recording of meter is in order. "***

The third Member, Shri M.G.Prabhakar, who is an outsider, gave a dissent order as follows:

- f) ***"Having regard to the submissions made before the Forum and on perusal of records it is very evident that Respondent have not been establish to exact date of failure. Therefore it would be prudent to establish a reasonable assessment of consumption based on the conditions of occupancy, purposes for which energy is being used and then provide an opportunity to the Consumer to file his objections, if any, before making a demand for 6 months. I am of the view that 6 months back billing provisions are statutory maximum period prescribed under the law and same cannot be applied routinely.***

Respondents are required to make a fair assessment and after affording an opportunity demand could be raised in accordance with law."

Aggrieved by the majority order, the Complainant filed this representation before this Authority on 03.08.2009 and has made the following prayer:

III.

PRAYER

It is prayed to:

1. Set aside the orders of the 2nd Respondent dated 29.06.2009 in its file No.CGRF/23/2008/257-262.
2. Set aside the back bill pursuant to the Meter Testing dated 28.08.08 in file No.AEE(E)/26/aao/sa/2957
3. Grant such other relief/reliefs as justified under the circumstances of the case in the interest of justice, equity and good conscience.

IV. Settlement by Agreement

An opportunity by way of this office letter dated 21.08.2009 was extended to both the parties to explore the possibility of settlement by conciliation and agreement. The 1st Respondent vide his letter No.AEE(E)/S6.AAO/2386 dated 31.8.2009 has stated that the consumer has not come forward to explore the possibilities of settlement by conciliation and mediation. Further, both the parties were called and efforts were made to reach an agreement by conciliation. Since no accord was possible, it was decided to hear the parties and pass an award.

Accordingly, the matter was heard on 17.11.2009. Both the parties appeared and deposed.

In addition, the Complainant filed a Memo, making additional submissions on 20.01.2009, a copy of which was also made available by him to the 1st Respondent on 06.01.2010. The 1st Respondent was asked to file further comments by a letter dated 20.01.2010 on this Memo by giving time upto 29.1.2010.

The 1st Respondent appeared on 28.01.2010 along with Sri Gangadhar B. Assistant Executive Engineer, H.T.rating, M.T. Division, Bangalore and requested for recording his statement also on the testing carried out. His statement was recorded in the presence of the Complainant's representative and a copy of the statement was handed over to him. He, in turn, has again filed reply on 29.1.2010 to these depositions.

V. Discussions and Analysis:

1. The software of the electronic meter is stated to be defective.
2. From the day the additional 40 KVA was commissioned on 1.8.2006, the consumption recorded is consistent without much variation. The alleged percentage slow of 52.8% brings the hundred percent consumption to 11747 units per month.

During none of the months even once this much of consumption is recorded. During the undisputed period from 1.8.2006 to 1.2.2008, the highest consumption recorded is only 8132 units on 1.6.2007. During these months the consumption is on an average of 6011 units recorded per month.

3. Even after replacement of old meter by new one on 30.12.2008, there was fall in the consumption instead of increase in the consumption.

4. When the matter was being heard, the 1st Respondent was advised on 13.12.2008 to get the meter tested by a 3rd party as confirmed in the letter No.AEE(E)/SA/AAO/377 dated 21.4.2009 from 1st Respondent addressed to the Complainant.

5. Defying these instructions, the Respondent Licensee conducted the test again on 30.12.2008 and replaced the meter without the presence of the 3rd party. The Complainant has brought this irregularity to the notice of 1st Respondent and has addressed letter to him dated 25.4.2009 requesting him to produce the meter for testing before the 3rd party the manufacturer and the CPRI, Bangalore.

6. The remarks of the Testing Officer on 28.8.2008 on the testing report at para 2 that (a) **the meter suspected faulty** and (b) **There is no actual date of failure of current from the down loaded data of ETV meter. It is stated to be suspected, there is no definiteness in the statement.**

7. The mahazar report also states that **the data was downloaded for further investigation. This indicates that further investigation was necessary before arriving at any conclusions.**

8. In a letter No.AEE(E)/AAO/4043 dated 5.1.2009 from 1st Respondent addressed to the General Manager, he states that the meter was replaced on 31.12.2008. But the AEE MT's report states that the meter was replaced on 30.12.2008.

9. There are a lot of contradictions and the 2nd test was conducted on 30.12.2008 without the presence of 3rd party.

10. The Member, Sri M.G.Prabhakar, has given a dissent order as noted at para II (f) giving reasons for not agreeing with his colleagues pointing out that the relevant provisions are not followed.

VI. Findings

Based on these discussions and analysis the findings are that for a periodical testing the provisions of 26.02, 27.02 and 27.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka (COS) are applicable. The following provisions are reproduced:

27.02: Licensee's qualified Engineer shall conduct periodical inspection / test to check the working / correctness of meter in case the consumption recorded in a month is less than 50% of the consumption of the previous month, such Meter shall be inspected and reasons for such short fall shall be recorded.

27.03: In the event of test being undertaken by the Licensee periodically as per clause 26.02 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.

- (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.

These provisions are not strictly followed by the Respondent Licensee as detailed below:

1. The testing Engineer when he tested the meter on 28.8.2008 has expressed in his report as (1) **"Suspected Meter fault "** (2) **There is no actual date of failure and in the mahazar drawn he has noted that "the data downloaded for further investigation."** He was not sure about the results of the test. But however he has taken the signature of the tenant of the building.
2. The Respondent Licensee testing Engineer and the 1st Respondent, should not have conducted the test on 30.12.2008 and replaced the meter, as the earlier testing on 28.12.2008 itself was disputed and the 2nd Respondent had ordered for 3rd party testing.
3. This act indicates that the Respondent Licensee Engineer were not sure of results of the tests and hence were not bold enough to get the meter tested by a 3rd party. Hence, the results of the testing conducted on 30.12.2008 are held invalid.
4. **Though the results of the test conducted on 28.8.2008 are doubtful as stated at para 1 above, the Complainant has not refused to sign the mahazar as was necessary as at para 27.03 (iv) of Conditions of Supply and has agreed to pay the difference in consumption.**
5. The 2nd Respondent has erred in passing the order upholding the back billing charges for six months and beyond even though the Respondent Licensee has failed to honour the directions to conduct 2nd test on 30.12.2008 in presence of the 3rd party.

6. The following important points are recognized important to arrive at a decision:

(i) The dissent order of the Member, Sri Prabhakar rightly points out that due regard is to be paid to the conditions of working, occupancy etc., instead of routinely back billing for 6 months.

(ii) (a) It is seen that there is no abnormal fall in consumption as per 27.02.

(b) There is no actual date of failure of current from the down loaded data of the ETV meter as recorded by the testing Engineer in his report dated 28.8.2008.

(c) The act of defying the instructions of the 2nd Respondent to conduct tests second time in presence of 3rd party by the Respondent Licensee indicates that the Respondent Licensee avoided knowingly the presence of 3rd party for reasons best known to them.

VII. Hence, having regard to the facts of the case mentioned above and the finding at para VI above, the back billing charges are limited to the month of August 2008 only. The calculations are as mentioned below:

Consumption recorded for the month of

August 2008	:	4549 units	
Units yet to be billed	:	$\frac{4549 \times 52.80}{47.20} = 5088.7$, say 5089 units	
Amount to be paid works out to	:	5089 X Rs.4.85=	Rs.24681.65
Tax	:		<u>Rs. 1234.08</u>
Total			Rs.25,915.73, =====
			say Rs.25,916/-

VIII. Based on the above discussions, analysis and findings, this Authority passes the following order:

ORDER

1. The order No.CGRF/23/2008/257-262 dated 29.06.2009 passed by the 2nd Respondent and the back billing notice No.AEE(E)/26/AAO/SA/2957 dated 28.8.2008 are set aside.

2. The Complainant shall remit the difference charges of consumption for the month of August 2008 worked out to Rs.25,916/- at para VII above within 30 days from the date of receipt of this Order, failing which, the 1st Respondent is at liberty to initiate action as per law for recovery of this amount.

(S.D.Ukkali)
Ombudsman

1. Shri L.S.Ramalingaiah, No.1781, D.M.Tower, Opp.Family Mart, J.P.Nagar 6th Phase, Bangalore.
2. The Chairman, CGRF, BESCO, Central Stores Premises, near ESI Hospital, Rajajinagar, Bangalore-560010
3. The Asst. Executive Engineer, S-6 Sub Division, J.P.Nagar, Bangalore.
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

