

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

**Present: S.D.Ukkali
Ombudsman
Case No.OMB/B/G-78/10/8430
Dated 15.06.2010**

M/s.Laxmi Prasad Enterprises,
No.88/A, 1st Floor,
Koramangala Industrial Layout,
Koramangala,
BANGALORE-560095
(Represented by Sri Shridhar Prabhu,
Advocate)

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Complainant

Vs

1. Bangalore Electricity Supply Company (BESCOM)
Represented by its
Asst.Executive Engineer(E)
S-4 Sub Division, BESCOM
B.D.A.Complex,
Koramangala
Bangalore-560034

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 31.12.2009 passed by the 2nd Respondent in its file No.CGRF/44/2009/584-590.

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

1. The Complainant is having an electrical connection bearing R.R. No.3SAP60 under LT-5 tariff category situated at No.88/A, 1st Floor, Koramangala Industrial Area, Bangalore with a sanctioned load of 64 HP.
2. The Vigilance squad of BESCO inspected this installation on 20.9.2009 and generated a report along with mahazar report.
3. Pursuant to this inspection report, a letter dated 26.11.2008 was issued by the 1st Respondent demanding a back billing charges of Rs.6,51,047/- for unauthorized extension to other RR No.3SAP 68 as per the Vigilance report.
4. Aggrieved by this action and demand made by the 1st Respondent, the Complainant filed a complainant before the 2nd Respondent and the 2nd Respondent, after hearing both the parties, passed an order dated 31.12.2009 holding that the letter issued by the 1st Respondent was in order. One of the Members of the 2nd Respondent has given a dissent order.
5. While the Complainant was in the process of filing a representation before this Authority against the order of the 2nd Respondent, the 1st Respondent issued a letter on 25.1.2010 demanding the back billing charges failing which he threatened that he would disconnect the installation within 7 days. The Complainant has filed this appeal complaint before this authority and fearing disconnection requested for an interim order and made the following prayer before this Authority:

III.

PRAYER

- 1) To call for all records and documents filed in Case NO.CG RF/44/2009/584-590 filed before the 2nd Respondent.
- 2) To pass an order/s quashing the order by the 2nd Respondent vide No.CG RF/44/2009/584-590 dated 31.12.2009.

- 3) To quash the demand notice No.5073 dated 25.1.2010 from the 1st Respondent.
- 4) Grant the Complainant the cost of this appeal and pass any other order/s to meet the ends of justice.

The Complainant also made the following Interim Prayer:

IV. INTERIM PRAYER

- 1) To stay the operation of the Order of the 2nd Respondent in case No. CGRF/44/2009/584-590 dated 31.12.2009.
- 2) To direct the 1st Respondent not to disconnect the installation pending final adjudication of the case on merits.

After hearing both the parties on 09.02.2010 and after perusing the material submitted by both the parties, this Authority felt that in the interest of justice passing an interim order was necessitated in terms of Regulation 22.04 of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004, and the Interim Order was passed.

V. 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-82/2010/8025 dated 06.04.2010. The 1st Respondent, Sri M.R.Ramesh and the Advocate for the Complainant, Sri Shridhar Prabhu appeared and they were heard on 28.05.2010. During the hearings 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.

VII. Discussion and Analysis

A. The Contentions of the 1st Respondent are as follows:

1. While granting interim order, the Senior Assistant of S-4 Sub Division Sri Y.Muniyappa on 9.2.2010 deposed before this Authority. During the regular hearing, the 1st Respondent deposed and stated that M/s.Laxmiprasad Enterprises have availed electrical connection bearing RR No.3 SAP 60 with a sanctioned load of 64 HP. The vigilance authorities of BESCO Bangalore visited this installation on 20.9.2008 and got the installation rated along with RR No. 3 SAP 68 and found that the load of 25 HP of 3 SAP 60 was extended to 3 SAP 68..

2. M/s.Laxmiprasad Enterprises who are the owners of 3 SAP 60 are not utilizing the load sanctioned to them and it is only a godown without any activities but this load was being used by 3 SAP 68. On receipt of a report from the Vigilance authorities, a back bill notice for Rs.6,51,047.04 was served to the consumer on 4.11.2008.

3. Aggrieved by this notice, the consumer filed a complaint before the 2nd Respondent and after hearing an order came to be passed upholding the demand. Another notice demanding the payment of back billing charges was sent on 24.1.2010. But the consumer did not pay the amount but filed a complaint with this Authority.

4. The consumer of 3 SAP 68 in order to avoid the HT connection is utilizing the load of RR No.3 SAP 60. Therefore, the demand made by the sub division is in order and therefore the complainant has to make payment and prayed to dismiss the Complainant's request.

B. Per Contra, the Advocate for the Complainant argues as under:

1. The mahazar is drawn with regard to M/s.Metal Impact Private Limited RR No.3 SAP 68 but the demand is raised on this complainant. Therefore without there being any mahazar no back billing can be raised.

2. Relying upon the judgement rendered by the Division Bench of the Allahabad High Court wherein it is clearly stated that opportunity of hearing and proper procedure for raising the demand is at the very heart of the back billing process. Therefore, the entire procedure in the present case stands vitiated.

3. The Complainant soon after the demand notice requested the Licensee to provide a copy of the documents relied upon by them. However, the same were not provided by Licensee.

4. Further, the Licensee has not filed any parawise comments before the 2nd Respondent. Hence, there is no justification on record as to why the demand was raised. The demand notice is liable to be set aside.

5. The demand notice dated 26.11.2008 does not specify as to what offence is the committed. The ES&D Code 2001 is not in force and violation of the same cannot be deemed as any offence. Hence no back billing charges can be raised.

6. The Hon. Member of the 2nd Respondent in his dissent order has clearly stated that the Licensee was not able to show to the Forum that alleged unauthorized extension was in the premises belonging to M/s.Metal Impacts and it was extended to M/s.Metal Impacts. Presuming that the unauthorized extension was made, the inventory and other connected machinery and equipments of M/s.Metal Impacts would have figured in the so-called inspection report generated by the Licensee.

7. Further, the Licensee has levied Rs.31,002/- as the tax at 5% of the consumption. It is submitted that BESCO has no authority to collect the tax because as per Karnataka (Taxation on Consumption on Electricity)1959, a Licensee is alone empowered to collect the tax. The Licensee under the Act is defined as KPTCL. BESCO is a separate company registered under the provisions of the Companies Act and is no way related to KPTCL. On this ground alone, the demand notice is liable to be set aside.

VIII. Findings

1. Para 6 of the Inspection Report 93009 dated 20.9.2008 of Vigilance squad made observation on the action to be taken by the 1st Respondent which is reproduced here below:

" BBC for unauthorized extension of load from one installation to another installation as per KERC Rules for twelve months (12 months)"

It has no legal strength as it is mentioned that BBC as per KERC rules for 12 months has to be claimed. There is no mention under what rule the claims are to be made.

2. Both the installations are metered separately and billed separately. It is not mentioned as to how the unauthorized load was extended.

3. The mahazar report suffers from legal infirmity. It is alleged that the M/s. Metal Impacts Private Limited situated in ground floor with RR No.3 SAP 68 is utilizing compressors also installed in ground floor but connected to 3 SAP 60 situated in first floor which is alleged to be a godown.

- a) The details of load are 7 compressors of 10 HP and one Compressor of 5 HP. This works out to 15 HP, but they have calculated the connected load as 25 HP.
- b) The allegation is against the consumer of RR NO.3 SAP 68 for having connected the load of 3 SAP 60, but strangely the back billing is claimed on 3 SAP 60

4. The 1st Respondent has stated that this arrangement has been made by the owner of 3 SAP 68 to avoid availing HT supply. This does not amount to unauthorized extension. The 1st Respondent has to invoke the particular provisions to force the consumer of 3 SAP 68 to avail HT supply, when he uses the LT load more than permissible under LT category.

5. The 2nd Respondent has erred in passing the impugned order on the unauthorized extension of load as it has no jurisdiction if it is a case of unauthorized load. The impugned order needs to be set aside.

6. One of the Members, Sri M.G.Prabhakar of the 2nd Respondent has rightly held that it is not a case of unauthorized extension. This Authority concurs with this view and holds that this Authority has jurisdiction as it is not a case of unauthorized extension of load and that both the installations are metered separately and billed separately but are sharing the compressed Air.

On the above findings, the petition is allowed.

Having regard to the facts and findings of the case by this Authority, the following order is passed:

IX.

ORDER

1. The impugned order dated 31.12.2009 in filed No.CGRF/44/2009/584-590 passed by the 2nd Respondent is set aside.
2. The demand notice No.5073 dated 25.1.2010 is quashed.

3. The 1st Respondent is at liberty to take action as per law to covert LT 3 SAP 68 to HT, if it is proved that the connected load of RR No. 3 SAP 60 is used by the consumer of RR No.3 SAP 68.

(S.D.Ukkali)
Ombudsman

1. M/s.Laxmi Prasad Enterprises, No.88/A, 1st Floor, Koramangala Industrial Layout, Koramangala, Bangalore-560095

2. The Consumer Grievance Redressal Forum, BESCO, Central Stores Premises, near ESI Hospital, Rajajinagar, Bangalore-560010

3. The Asst.Executive Engineer (Ele) S-4 Sub Division, BESCO, B.D.A. Complex, Koramangala, Bangalore-560034

4. The Managing Director, BESCO Corporate Office, K.R.Circle, Bangalore-560001.

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. O.C.A.

