

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

**Present: S.D.Ukkali
Ombudsman
Case No.OMB/B/G-82/10/8294
Dated 27.05.2010**

Shri M.R.Seetharam,
D4, 1st Floor,
Unity Building,
J.C.Road,
BANGALORE-560002
(Represented by Sri Anand,
Advocate)

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Complainant

Vs

1. Bangalore Electricity Supply Company (BESCOM)
Represented by its
Asst.Executive Engineer(Ele)
BESCOM
W-5 Sub Division,
Mysugar Building, J.C.Road,
Bangalore-560002

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 20.01.2010 passed by the 2nd Respondent in its file No.CGRF/19/2009/628.

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

1. An electrical connection bearing RR No.W-5 HT-37 with a sanctioned contract demand of 250 KVA was availed on 13.1.2005 by Sri Sadananda Rao, No.92, J.C.Road, Shivaji Tower, Bangalore-560002. Subsequently, the installation was transferred in the name of S.S.Enterprises on 14.9.2006. Again, it was transferred in the name of Sri M.R.Seetharam on 25.4.2008.. Upon the request of the Complainant, the contract demand was subsequently reduced from 250 KVA to 125 KVA with effect from 01.09.2005 by executing a fresh agreement for 125 KVA contract DEMAND.

2. The Complainant has drawn attention to the provision of 34.02 of ES&D Code 2000-2001 which entitles him to get his contract demand reduced during the initial agreement period. He has contended that since he has opted for a reduction of load within the initial agreement period, he need not have to pay any demand charges. He laments that all his pleas before the 1st Respondent did not yield any result.

3. The Complainant filed a petition before the 2nd Respondent. After hearing both the parties, the 2nd Respondent has passed an order dated 20.01.2010 in its file No.CGRF/19/2010/628. While the Chairperson and one Member upheld the decision of the 1st Respondent, the other Member, Sri M.J.Prabhakar has passed a dissent order dated 12.1.2010 not agreeing with his colleagues.

Aggrieved by this majority order of the 2nd Respondent, the Complainant has filed the present appeal complaint before this Authority with the following prayer:

III. PRAYER

1. Set aside the order of the 2nd Respondent.
2. Set aside the demand made by the 1st Respondent vide Notice No.AEE(E)/W5/AAO/669-72 dated 13th May 2009.

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-82/2010/8025 dated 06.04.2010. The 1st Respondent, Sri B.M.Ashok and the Advocate for the Complainant, Sri Anand appeared and they were heard on 13.05.2010 and 27.05.2010. 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.

V. Discussion and Analysis

A. The 1st Respondent contends as follows:

1. After receipt of the report from the AEE and EE, M.T. HT rating, BESCO, Bangalore, he observed that the reduction of the contract demand was granted within 6 months of its service and that as per rules the minimum charge of 75% of the contract demand was to be collected as per 32.04 of KERC Supply Code 2000-01 for 5 years. A provisional bill was received from the EE, MT-HT rating to claim the minimum charges for 32 months i.e. upto the period when the agreement period was reduced to 2 years by an amendment. The Complainant was asked to remit the amount of Rs.6,31,680/-.

2. He has further stated that there was a circular dated 26.12.2008 issued by the Chief Engineer, BMAZ, BESCO, Bangalore informing that there was an amendment to clause No.34.01 with regard to the reduction of contract demand of HT consumers and collection of minimum charges. Accordingly, from the date of the service for 32 months, a minimum charge at the rate of 75% of the original contract demand was prepared and the amount worked out to Rs.6,31,680/- by the EE, MT-HT rating, BESCO, Bangalore which was communicated to the Complainant vide letter dated 13.5.2009 asking the Complainant to make the payment within 30 days.

3. Aggrieved by this demand, the Complainant filed a complaint with the 2nd Respondent on 6.7.2009. After conducting hearing for 4 times, the 2nd Respondent passed an order upholding the claim.

Based on the above order, the Complainant was asked to pay Rs.7,01,165/- within 15 days.

4. Not satisfied with this order, the Complainant is before this Authority. The 1st Respondent urges that the Complainant has to pay the demand charges as claimed and that this Authority should reject the Complainant's request.

B. Per contra, the Advocate of the Complainant argues that:

1. The demand made by the BESCO against RR No.W5HT37 is contrary to the KERC Notification with regard to payment of minimum charges for the initial agreement period. The agreement with BESCO is for the supply of 250 KVA of power and was executed during 13th January 2005 and subsequently it was requested to reduce the power sanction to 125 KVA which was accorded when a fresh agreement came to be executed on 27th July 2005. BESCO after a lapse of almost 4 years, for the first time, made a demand of Rs.6,31,680/- towards minimum charges payable for the period from July 2005 to March 2008 vide demand notice dated 3.5.2009 to which the Complainant filed reply dated 28.5.2009 disputing and denying the claim made therein. The grievance was not settled by the 1st Respondent.

Thereupon, the Complainant filed a representation dated 26.6.2009 to settle the grievance. The 2nd Respondent, after hearing both the parties passed an order in which one of the Members accepting the stand of the Complainant held the demand as improper and is not enforceable as the same was bad in law. The Chairman and another Member, however, held the demand in order.

He argued that the reason given by one of the Members in favour of the Complainant are as follows:

1. Admittedly, the demand made by the Respondent is towards shortclaim made in respect of the minimum charges for the unexpired period of the initial contract period.
2. On perusal of OM issued by the EE West Division vide letter No.EEE/WE/AGM/M(T)/1874-75 dated 28.07.2005 approval has been accorded for reduction of load with certain conditions which is not inclusive of payment of any minimum charges therefore upon the execution of fresh agreement by the consumer the previous agreement stands terminated. Further payment of power supply charges, taxes etc. under condition 9 of the agreement nothing has been specified as monthly minimum charges.
3. Having regard to above two points discussed, it is evident that the claim made by the Licensee belatedly vide letter No.AEE(E)W5/AAO/669-72 dated 3.5.2009 does not survive. As per the amended conditions of supply regulation para 32.049(ii) for all HT installation the initial agreement period stands amended to two years from the date of 1st agreement. This is applicable to all existing installation under service.
4. In the light of the above discussions, I am of the view that supplemental claims of the Respondent is not enforceable and bad in law. Hence the demand notice issued by the Respondent is liable to be set aside.

The Advocate for the Complainant has contended that order of one Member of the 2nd Respondent giving reasons therein being proper and correct except para 3 requires to be upheld by this Authority. At the same time, the order of the Chairperson and another Member being contrary to the Notification of the KERC is liable to be set aside.

There is no legally acceptable ground putforth by the BESCO to substantiate and uphold the order of the 2nd Respondent. On the other hand, the written submission filed by the Complainant on the basis of and taking support of Notification No.KERC(ES&D) Code 2000-01 with Amendments upto 8.5.2003 are to be taken into consideration. Relevant clauses to be considered at this point of time are 2.15 and 2.35 of the said Notification.

He has further contended that under similar circumstances, the DGM, RAD, BESCO held that the AEE is not justified in claiming the minimum charges and reduction has been granted in one such similar case to W2 sub division of BESCO as per letter dated 21.11.2009 (copy already submitted to this Authority). He has alleged that for the delay caused by the concerned in BESCO the Complainant is made to

suffer for no fault of his. The Complainant prays that this Authority be pleased to set aside the demand of BESCO.

VI. FINDINGS

1. It is a fact that the said installation bearing RR No.W5HT-37 was serviced on 13.1.2005 with a sanctioned contract demand of 250 KVA. An agreement was entered into on that day.

2. Subsequently, the contract demand was reduced to 125 KVA for this RR No. by entering into a fresh agreement on 27.7.2005.

3. The Complainant was enjoying the power under contract demand of 125 KVA from 27.7.2005 and was paying the bills regularly. All of a sudden, nearly after 4 years, the installation was inspected by the MT staff of BESCO, Bangalore who directed the 1st Respondent to claim a minimum charge of 75% of the contract demand of 250 KVA as the agreement was in force for 5 years.

4. The 1st Respondent entered into an agreement on 13.1.2005 when 250 KVA contract demand was serviced. Clause 15 of this agreement which governs the reduction of contract demand reads thus:

“Reduction of Contract Demand: The consumer is entitled to get his Contract Demand reduced by executing a fresh agreement. The reduction will be given effect to from the meter reading date following the expiry of three months period from the date of receipt of his request by the supplier or the authorized officer. However, the consumer shall continue to pay line minimum charges specified under clause 9 supra, till the expiry of the initial agreement period.”

Clause 9 speaks of only payment of line minimum charges. There is no question of line minimum charges in this case.

5. Now, as per the approval accorded by the concerned Executive Engineer, BESCOM, to reduce the contract demand, the same was reduced to 125 KVA and both parties entered into a new agreement on 27.7.2005. This agreement is in force now.

6. The MT staff have quoted the provision 32.04 of KERC Supply Code 2000-01 which entitles the consumer to pay the minimum charges for a period of 5 years of initial agreement and that there was an amendment subsequently wherein the initial agreement period of 5 years was reduced to 2 years and that the 1st Respondent was asked to claim minimum charges till the date of amendment i.e. for 32 months.

From the perusal of these provisions, it is to be noted that the minimum indicated is a line minimum and the line minimum is payable wherever the work, is executed by the Licensee and the consumer has to pay the minimum for a period of 7 years. In this case, it is clarified by the Complainant that the work pertaining to this installation was executed by him under the self-execution basis and there was no question of collecting the line minimum charges.

7. Looking at the various provisions, the earlier KERC ES&D Code 00-01 and the present Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, there is no provision to collect the minimum charges on the contract demand.

8. Therefore, the 2nd Respondent's order needs to be set aside which is not based on law the prevailing.

Having regard to the facts and circumstances of the case, the following order is passed:

VII

ORDER

1. The order 20.01.2010 passed by the 2nd Respondent in its file No.CGRF/19/2009/628 is set aside.
2. The demand raised by the 1st Respondent vide his letter NO.AEE(E)/W5/AAO/669-72 dated 13.5.2009 is set aside.

(S.D.Ukkali)
Ombudsman

1. Shri M.R.Seetharam, D4, 1st Floor, Unity Building, J.C.Road, Bangalore-560002
2. The Consumer Grievance Redressal Forum, BESCO, Central Stores Premises, near ESI Hospital, Rajajinagar, Bangalore-560010
3. The Asst.Executive Engineer (Ele), W-5 Sub Division, BESCO, Mysugar Building, J.C.Road, Bangalore=560002
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.