

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

**Present: S.D.Ukkali
Ombudsman
Case No.OMB/B/G-61/09/7905
Dated 05.03.2010**

M/s. Metro Bankers Enclave,
G-1, Block2, Samhita Green Oak's Apartments,
4th A Cross, Kagdaspura Main Road,
C.V.Raman Nagar,
BANGALORE

(Represented by Sri V.V.Sridharan
One of the registered owner & occupant)

.. **Complainant**

Vs

M/s. Bangalore Electricity Supply Company (BESCOM)
represented by

1. The Asst.Executive Engineer(Ele)
S-7 Sub Division, BESCOM,
Old Airport Road,
Bangalore

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

.. **Respondents**

I. This is a representation filed by the above named Complainant through its Authorised Representative, Sri V.V.Sridharan, under the provisions of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 directed against the Order dated 02.07.2009 passed by the 2nd Respondent in its file No.CGRF/06/2009/305-310.

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

a) The Complainant has built a residential building of 2 blocks of 1 plus 4 apartments situated in G.M. Palya, Bangalore after getting the plan sanctioned from the Hindustan Aeronautics Limited Sanitary Board (HASB). The license bearing No.157 was granted by HASB and the commencement certificate was issued by them on 26.8.1994. The construction work commenced on 1.7.1995 and the construction was completed in 2005 and were allotted to various persons by way of registering the ownership. He availed temporary power supply for construction purpose. The Complainant submitted an application to the S-7 Sub Division, BESCO for sanction of 135 KW of permanent electricity supply and he, in turn, submitted the application for approval on 12.10.2006 to his higher authorities.

b) In the meanwhile, a dispute was raised by an unconcerned person, Sri L.C.Krishnamurthy, residing diagonally opposite to this building falsely alleging deviations in set backs while constructing the building stated to be without any basis. He brought a direction from the Hon. High Court of Karnataka directing the BBMP to conduct an inquiry and to verify with regard to the sanction plan and physical measurement at the spot. It was found by the BBMP authorities that the overall deviation in the said building under dispute was less than 5% and this was recommended for compounding by the Commissioner of BBMP. The AEE, BBMP passed a confirmation letter dated 25.1.2007. This order was challenged by the Complainant before the Hon. Karnataka Appellate Tribunal (KAT) which directed to maintain **status quo** till the case was adjudicated by KAT.

c) The Complainant submits that although at the time of submitting the application to the BESCO authorities there was no adverse orders on the building, the Respondent Licensee has not sanctioned power to the building despite repeated requests and production of required evidence. He has further submitted that the Confirmation Order dated 25.1.2007 has no legal sanction and has stated that the Complainant had approached the BBMP Commissioner to clarify the status of the confirmation order dated 25.1.2007 and the Commissioner ordered for the legal scrutiny of the whole matter and

on the instructions of Commissioner, BBMP, a legal opinion was given by the Legal Cell and the Commissioner on the note placed before him passed an order to proceed accordingly. When the Complainant approached the BESCO authorities along with a copy of the legal opinion of the BBMP on the confirmation order dated 25.1.2007, the Complainant, instead of being provided with power, was advised to approach the KAT to set aside the confirmation order.

d) The Complainant has stated that in the meantime, the BESCO authorities in the Corporate office have directed to avail the required power on temporary basis by creating necessary infrastructure if necessary vide its order dated 25.9.2008 addressed to the Superintending Engineer(C,O&M) but no action was taken by the SE or his subordinate officers till today. He has alleged that his application for temporary power supply also has not been considered.

e) Aggrieved by the inaction of the Respondent Licensee, a complaint was filed before the 2nd Respondent, who disposed off the complaint by passing an order that **"In the circumstances stated above the Forum does not find it necessary at present to pass any orders. The Complaint is disposed."**

Not satisfied by the above order, the Complainant filed this representation before this authority, praying for the following:

III.

PRAYER

a) To intervene in the matter considering the case sympathetically and provide permanent power supply in the interest of justice, equity and equality and enable the concerned to enjoy the possession of the property peacefully.

b) During the deposition before this Authority on 25.02.2010, the Complainant has prayed that if the permanent power supply cannot be extended immediately as it would require development of infrastructure, an order be granted directing the Respondent Licensee to enhance the temporary power supply, as per the directions of the General

Manager, BESCOM Corporate Office to the Superintending Engineer (C,O&M), BESCOM, South Circle, till the permanent power supply is granted.

IV. Settlement by Agreement

This Authority by a letter NO.OMB/B/G-61/09/6999 dated 21.08.2009 brought to the notice of both the parties that Sub-Regulation 1 of Regulation 20 of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 provides an opportunity for settlement by agreement through conciliation and mediation. But both the parties were not agreeable for a solution through settlement and hence, the parties were heard and it was decided to pass an award.

V. Personal Hearing:

Both the parties were heard on 25.02.10 when the jurisdictional AEE and the Complainant deposed before this Authority. On 03.03.10, the Executive Engineer, Additional South Division, BESCOM Bangalore deposed and clarified the position in respect of the entire case.

VI. Discussion and Analysis

The contentions of the Complainant are as mentioned below:

- 1) Though the building was constructed as per approved plan by the Hindustan Aeronautics Limited Sanitary Board (HASB) and that, temporary power supply was availed for construction purposes. The 1st Respondent and his higher officer did not arrange permanent power supply of 135 KW and unnecessarily delayed the sanction of power etc.
- 2) An unconcerned person one Sri L.C.Krishnamurthy raised objections by filing writ petitions in Hon. High Court etc. and that the Respondent Licensee unnecessarily withheld sanction of permanent power to the building at his intervention.

3) The action of the AEE, BBMP was challenged before the Hon. KAT which ordered to maintain status-quo till the case was finally disposed off by KAT and this status quo did not bar the authorities to provide civic amenities to the building.

4) There is no order from any Court directing BESCOB not to provide power supply to the building.

5) a) During the deposition, the Complainant's nominee urged for intervention by this Authority and order for sanction of permanent power supply of 135 KW.

b) In the event, sanction of permanent power supply cannot be extended immediately, an order be passed to enhance the temporary power supply till the permanent power supply as directed already by the General Manager, BESCOB Corporate office to the Superintending Engineer (C,O&M), BESCOB is extended.

6) The most important fact is the case No.121/2007 filed before the Karnataka Appellate Tribunal (KAT) which has passed an interim order to maintain status-quo till the matter was adjudicated by KAT.

7) Another order by Hon. High Court filed by the Complainants against (1) the General Manager (E)(C,O&M), Bangalore South Circle, BESCOB, K.R. Circle, Bangalore-1 (2) The Executive Engineer, Additional South Division, BESCOB, Bangalore in Writ Petition No.15584 of 2007 passed on 30.11.2007. Para 5 of the order is reproduced below:

"5) There is absolutely no illegality or anything lacking in the endorsement at Annexure-H indicating that power connection to an unauthorized and illegally constructed building cannot be granted and therefore, no occasion to issue a writ of certiorari to quash this endorsement."

8) One Sri L.C.Krishnamurthy stated to be the unconcerned person has also submitted certain documents, Court order etc.. One such order filed by him against (1)

MD, BESCOM (2) SE, BESCOM (3) EE, BESCOM (4) 1st Respondent (5) the Complainant before the Hon. High Court in Writ Petition No.19027 of 2007 passed on 2.1.2008 is relevant to this case. Paras 4 & 5 of the Order are reproduced here below.

"4) Sri N.K.Gupta, learned counsel appearing for respondents 1 to 4 at the outset submitted, that the representations submitted by the petitioner including the Legal Notice issued through counsel will be considered and appropriate decision will be taken in accordance with the relevant Regulations which is applicable to the facts and circumstances of the case and in the light of the order passed by the General Manager (Electrical) (C,O&M), Bangalore South Circle, strictly in the light of the provisions of conditions of supply of Electricity of Distribution Licensees by the State of Karnataka and specifically with reference to relevant Regulations as expeditiously as possible and dispose of the matter within the reasonable time that may be fixed by this Court.

5) In the light of the facts & circumstances and in the light of the submission made by the learned counsel for respondents 1 to 4 without expressing any opinion on the merits of the case it would suffice for this Court if appropriate direction is issued to respondents 3 & 4 to consider the representations submitted by the petitioner vide Annexure-M & N dated 19.4.2007 and 31.8.2007 and Legal Notice issued through counsel dated 7.11.07 vide Annexure-O in the light of the directions issued by the General Manager (C,O&M) Bangalore South Circle, dated 2nd June2007, with reference to the existing Regulations as referred to above and dispose of the same as expeditiously as possible at any rate within a period of 8 weeks from the date of receipt of this order."

9) After passing of the order cited above by the Hon. High Court in Writ Petition No.19027 of 2007, on behalf of 1st Respondent (the MD, BESCOM), a direction by a letter No.BESCOM/GMT/BC-20/F-1069/2007-08/6144-47 dated 25.09.2008 was issued to the Superintending Engineer Elecl., (C,O&M), South Circle, Bangalore and the relevant portion of at para 3 is reproduced here below:

"In the light of the above proceedings, the temporary power supply already granted shall be continued. The consumer may avail more load as per his requirements by following the existing norms on temporary basis only duly creating necessary infrastructure based on the load

requirement. Further, the consumer may be requested to obtain necessary approval from the concerned authorities for availing permanent power supply by following the existing norms of "Conditions of Supply of Electricity of Distribution Licensee in the State of Karnataka". However, during the above period temporary power supply will prevail.

In the event of the decision going against the consumer, the temporary power supply granted will be withdrawn without further notice and the Licensee is not liable for any commitment either for arranging power supply or towards the investment made by the consumer. In case the verdict is delivered in favour of the consumer action may be initiated to provide permanent power supply by following the existing norms of "Conditions of Supply of Electricity of Distribution Licensee in the State of Karnataka" from the date of completion of fulfillment of all formalities by the consumer."

10) The 1st Respondent has deposed on behalf of BESCO and has stated that, on receipt of the application for additional temporary power supply of 40 KW, he has forwarded the request to the EE, BESCO and he further brings to the notice of this Authority, as per Regulation 22.1(d) of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2004, this petition of the Complainant is not maintainable and be dismissed.

11) The Executive Engineer, Additional South Division, BESCO, Bangalore also deposed on 3.3.2010 and argued that since the matter is pending before the KAT for adjudication on whether the building was illegally constructed etc. and hence permanent power supply could not be sanctioned. However, for additional 40 KW of temporary power supply, higher authorities have been requested to permit him to sanction additional 40 KW as there is a ban on sanction of temporary power supply of more than 5 KWs.

From the aforesaid discussions, the following are the findings.

VII. Findings:

1. Though it is clear that the action as per directions mentioned at Sub Paras 8 and 9 of Para VI mentioned above need to be taken by the respondents of the Licensee, **the intervention by this Authority as prayed by the Complainant is not necessary as explained in the following paras.**

2. Regulation 22.1 of the KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2004 says that **no representation to the Ombudsman shall lie:**

"d. In cases where a representation for the same grievance by the Complainant is pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority."

This provision has been brought to the notice of this Authority by the 1st Respondent by filing additional memo dated 2.3.2010 that this Authority should not entertain the cases pending before Hon. Tribunal and Hon. High Court of Karnataka.

In the instant matter, a case is pending before the Karnataka Appellate Tribunal, Bangalore to adjudicate on the legality of construction of the building where the electricity supply on permanent basis is to be sanctioned.

The Complainant's nominee has also filed a counter memo that his grievance is for non-supply of electricity to the building and the pending case before KAT is on legality of construction of the building. This contention of the Complainant cannot be accepted as the supply of electricity on permanent basis depends on the issue whether building constructed was legal or otherwise and this matter needs to be adjudicated by the KAT. Hence, this Authority cannot intervene in the matter.

Further, the same provision also says that in case where a decree or a final order has been passed by the Court, the representation before the Ombudsman is not

maintainable. Based on the Hon. High Court's Order mentioned at para VI (8) above, the Licensee Respondents have issued a letter cited at above Para VI(9) and this has attained finality. Hence, on this ground also, this Authority cannot intervene in the matter.

3. The 2nd Respondent's order, therefore, needs to be upheld.

VIII. Having regard to the facts, discussion, analysis and findings, the following order is passed.

ORDER

This Representation is not maintainable and is disposed off without any intervention by this authority.

(S.D.Ukkali)
Ombudsman

1. M/s. Metro Bankers Enclave, G-1, Block-2, Samhita Green Oak's Apartments, 4th A Cross, Kagdaspura Main Road, C.V.Raman Nagar, Bangalore
2. The Consumer Grievance Redressal Forum, BESCO, Central Stores Premises, near ESI Hospital, Rajajinagar, Bangalore-560010
3. The Asst.Executive Engineer(Ele), BESCO, S-7 Sub Division, Old Airport Road ,Bangalore-560070
4. The Managing Director, BESCO Corporate Office, 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)