

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

**Present: S.D.Ukkali
Ombudsman
Case No.OMB/B /G-87/10/8413
Dated 11.06.2010**

Shri Rajendra Bhansali,
Oswal Beverages,
Bhole Farm, Hosahalli Village,
Vishwaneedam Post,
Magadi Main Road,
BANGALORE-560091
(Represented by Sri M.A.Dalvi,
Advocate)

..

Complainant

Vs

1. Bangalore Electricity Supply Company (BESCOM)
Represented by its
Asst.Executive Engineer(E)
N-6 Sub Division, BESCOM
No.15 & 10, Doddanna School Compound,
Magadi Main Road, Sunkadakatte,
Bangalore-560091

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 under the provisions of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 directed against the Order dated 17.05.2010 passed by the 2nd Respondent in its file No.CGRF/53/2010/814-819.

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

1. The Complainant has availed an electrical connection on LT basis with a sanctioned load of 65 HP bearing RR No.N2P 4817 situated at No.5, Bhole Farm, Hosahalli Village, Bangalore.
2. He has been utilizing the electricity regularly and paying the bills to N-6 sub division of BESCO, Bangalore.
3. The vigilance staff of BESCO along with Testing staff visited the premises on 5.2.2009 and conducted inspection and testing. They found a load of 132 HP being used as against the sanctioned load of 65 HP. It is alleged that the consumer unauthorisedly extended power supply to the adjacent buildings and one such building was under construction.
4. Based on the report from the Vigilance authorities and the MT report, back billing charges for Rs.20,89,331 (Rupees Twenty Lakhs Eighty Nine Thousand Three Hundred and Thirty One) was demanded by the 1st Respondent and communicated to the Complainant vide letter No. AEE/ELE/AAO/2008-2009/3601-04 dated 12.2.2009.
5. The Complainant states that he had applied for conversion of this LT installation into HT installation (11KV) with a request to sanction 200 KVA contract demand opting for HT-2(a) tariff. Conversion of LT to HT was approved and 200 KVA power was sanctioned by a letter dated 19.4.2007 by the Executive Engineer, North Division, BESCO, Bangalore.
6. As per the sanction accorded the complainant remitted all the required deposits and submitted the papers but despite observing all the formalities, the installation was not serviced.

7. Aggrieved by this demand notice, the consumer filed a complaint before the 2nd Respondent to settle his grievance on 24.2.2009. The 2nd Respondent conducted hearing and wrote a letter No.CGRF/448 dated 5.9.2009 to the 1st Respondent asking him to pass a speaking order and marked a copy to Sri Shridhar Prabhu, legal counsel for the Complainant directing him to contact the 1st Respondent and indicated that the Forum has no jurisdiction to pass the orders.

8. Thereupon, the Complainant received a speaking order from the 1st Respondent confirming the same back billing charges.

9. Aggrieved by this letter and the letter from the 2nd Respondent, he filed an appeal complaint before this Authority on 11.2.2010 in Form B for redressal of his grievance.

10. It was observed by this Authority that the letter written to the 1st Respondent by the Chairperson of the 2nd Respondent was not an order by the Forum. A letter No.7800 dated 16.2.2010 was addressed to the Chairperson of the 2nd Respondent from this office drawing his attention to the provisions of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2004 at Regulations 7 and 8 on the proceedings to be conducted by the Forum. His attention was specifically drawn to Sub Regulation 8.3 of Regulation 8 which reads thus:

"Every order made by the Forum shall be signed by its Chairperson and the Members conducting the proceeding. Provided that in case of difference of opinion among the Members on any point or points, the decision of the majority shall prevail"

He was asked to act as per this procedure. The Complainant requested for servicing H.T. installation as he had already fulfilled all the formalities. The request was not conceded but the Complainant was made to pay 50% of back billing charges, and the installation was serviced under H.T. on 15.5.2010. Thereupon the 2nd Respondent passed a majority order No.CGRF/53/2010/814-819 dated 17.05.2010 after a lapse of about three months that the matter does not come **under the jurisdiction of the Forum**. The 3rd Member, appointed by the KERC, has given a dissent order.

11. Aggrieved by this majority order, the Complainant again filed a complaint in Form B on 20.5.2010 before this Authority praying for the following relief:

III.

PRAYER

1. To set aside the impugned order passed in file No.CGRF/53/2010/814-819 dated 17.5.2010 by the 2nd Respondent.
2. To set aside the back billing charges claimed by the 1st Respondent in letter NO.AEE/ELEC/AAO/2008-09 dated 12.2.2009 and letter No.AEE(ELE)N6/6360-64 dated 4.2.2010.
3. To grant the consequential benefits to this Complainant petitioner arising out from the above directions including the refund of 50% plus 1% of the disputed bill paid to avail service of the HT installations out of the back bill.
4. To award costs towards deficiency of service for the failure to service the HT installation in time and for making a wrong charge in utter disregard to the provision.

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-87/2010/8349 dated 01.06.2010. The 1st Respondent, Sri Maltesh Talawar and Counsel for the Complainant, Sri M.A.Dalvi appeared and they were heard on 10.06.2010. 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. Discussion and Analysis

A. The 1st Respondent contends as follows:

1. This 65 HP power was sanctioned with RR No.N2P 4817 on LT basis for a particular building marked in the wiring diagram and they were eligible to use electricity for that particular portion only.
2. The consumer requested for conversion of this LT installation to HT installation at 11 KV with 200 KVA contract demand. The EE North Division, BESCO, Bangalore approved conversion from LT to HT and sanctioned 200 KVA CD on 19.4.2007.
3. The consumer paid the security deposit and 10% Supervision Charges and carried out the works also. But have not availed the HT power supply because of the work of construction of building. Work has been completed by the consumer but has not intimated the BESCO office.
4. This LT installation N2P 4817 was inspected on 5.2.2009 by the BESCO vigilance authorities Shri H.R.Srinivas and his staff and found that the electricity was extended unauthorisedly to a neighbouring building of the same owner and connected to additional load of 81.72 HP apart from the sanctioned load and an additional load of 2.4 KW was used for construction purpose of some other building of the same owner in the premises.
5. Based on the provisional bill from the AO office of the SP vigilance, BESCO, Bangalore in No. BC/34/2430/5353/1402 dated 9.2.2009 for Rs.20,89,331/- (Rupees Twenty Lakhs Eighty Nine Thousand Three Hundred and Thirty One). A demand notice No.N6/AEE/ELE/AAO/2008-09/3601-04 dated 12.2.2009 was sent to the consumer for making payment.
6. To this demand notice the consumer has not filed any objection but have filed a complaint before the 2nd Respondent on 24.2.2009.

7. Hearing was conducted by the 2nd Respondent. The Chairman of the 2nd Respondent directed him to write a letter to the Vigilance Authorities to conduct re-inspection.

8. A letter was addressed to the Vigilance Authorities in this regard. The Vigilance Authorities intimated that there was no provision for re-inspection and confirmed the same by a letter dated 30.1.2010 that the directions already issued were final. They also quoted the KPTCL Circular No.KPTCL/B-20/4050/2000-01 dated 20.08.01 noted here below:

“Under No circumstances, the re-inspection of the electrical installation at the request of the consumer shall be entertained as the situation will change from time to time.”

9. The opinion of the Vigilance was intimated to the 2nd Respondent who directed the undersigned to pass a speaking order and the same was done vide letter No CGRF/448 dated 5.9.2009. The matter was pending with the 2nd Respondent and a majority order was passed later on 17.5.2010.

10. The Complainant has now filed a complaint before this Authority. He argues that since the Complainant had connected unauthorized load without a sanction from BESCOM, the back billing claimed from his office was in order and requested to direct the Complainant to pay the balance 50% of the amount by rejecting his appeal.

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

1. This petition arises out of a order by the 2nd Respondent dated 17.5.2010 wherein by a majority judgement the Forum has ordered that the complaint filed by this petitioner does not fall under the jurisdiction of the Forum. But one of the Members has held that it has jurisdiction.

2. The complaint arises out of a meter testing and vigilance inspection of the installation carried on 5.2.2009. In the meter testing report, as against the sanctioned load of 65 HP, the rated HP was only 56.97 HP. The meter testing report does not say that the installation had any load connected in excess of the sanctioned load. Very peculiarly, on the same day, the vigilance reports that they found load on the system in excess to the sanctioned load.

3. The mahazar report drawn by the inspecting office of the vigilance does not indicate any excess load or violation of any provision of the conditions of supply. The vigilance staff taking the law for granted effected disconnection of the installation on the same day i.e. 5.2.2009 and after much pleading the service was restored on 7.2.2009. Acting on the back bill worked out and sent to the sub division, the sub division in turn served the same for a sum of Rs.19,86,024.00 (Rupees Nineteen Lakhs Eighty Six Thousand and Twenty Four) in No.AEE/ELE/AAO/2009-3601-94 dated 12.2.2009.

4. It is relevant to state that the notice failed to call upon this complainant to file his objection to the back billing. Hence, the objections were not filed before that authority. Instead a representation was made to the SP Vigilance and also an appeal in the form of a complaint was filed before the 2nd Respondent.

5. From the back bill this petitioner came to know that the Vigilance Authority has very wrongly concluded that there was excess load and also that a portion of the load has been unauthorisedly extended. This was a arbitrary conclusion not supported by the field reality. This complainant is the owner of the land which is about 6.75 acres within which this structure has been put up wherein the LT installation bearing RR No.N2P4817 was in existence. The provision 42.05 does not apply to this case..

As there is no such extension involving any other person or any other premises. The Complainant is the sole consumer and the structure happens to be on

the land owned by this complainant. Hence, the conclusion that there was any unauthorized extension is totally false and incorrect.

6. This petitioner with a view to expand his business has applied for sanction of 200 KVA power on HT basis and observed all the required formalities. **The sub division on its part after collecting all the required amounts failed to cause any notice to this petitioner to avail HT service. The invoices for having purchased the required motors and machineries are filed herewith to rebut the incorrect statements and conclusions filed by the inspecting staff.**

7. The 2nd Respondent admitted the petition but for reasons not known, the Chairperson of the Forum addressed a letter to the 1st Respondent to pass speaking order and the 1st Respondent confirmed the same back billing charges.

8. Having no other alternative, this petitioner filed an appeal petition before this Authority against this disposal of the appeal. This Authority very rightfully addressed a letter dated 16.2.2010 to the 2nd Respondent pointing out the legal lacunae and directing it to dispose off the appeal in its proceedings. **Thereafter, the Forum without further hearing of the issues involved passed the impugned order dated 17.5.2010 disposing off the appeal by stating that it does not come under the jurisdiction of the Forum.**

9. These issues come within the purview of the 2nd Respondent but very unfortunately by a majority judgement the complaint was summarily disposed off without affording an opportunity to this appellant to present his case effectively. This has ended into miscarriage of justice. Hence this appeal before this Authority.

10. It is submitted that as could be seen from the meter testing report the meter was not overloaded as the rated HP shown at the time of meter calibration was much less than the sanctioned load.

11. This apart although the vigilance staff have drawn a report but that report is silent with regard to any violation of rules or any load on the system.

12. The physical inventory drawn on the back of the report does not convey any concluding usage of this machinery.

13. It was procured for purposes of and in contemplation of connecting the HT installation.

14. Considering the capacity of the meter, had it been connected to the system and used the meter might have got burnt.

15. The Inspecting staff have very incorrectly for purposes of claiming a hefty back bill furnished a astronomical load and thereafter applied an incorrect provision of 42.05 only to make out a hefty back bill.

16. Since the Forum failed to grant any relief and in view of continued losses that this appellant was facing, he was forced to approach the authorities seeking service to the HT installation. The authorities considered the representation and acceded to the request by imposing certain conditions which includes depositing of 50% of the disputed bill plus 1% on the total claim. Accordingly, this petitioner made the required deposits and the HT was serviced on 15.5.2010.

17. He urged that this matter squarely falls within the jurisdiction of the Forum and this view is endorsed by one of the Members by giving a dissent order and hence this Authority has jurisdiction. It is prayed that the relief/s sought at Para III be granted.

VI. Findings

1. The Complainant with a view to expand his activities has sought for conversion of LT to HT and sanction of 200 KVA power.

2. The Respondent Licensee has granted this request on 19.4.2007.
3. The complainant has fulfilled all the formalities including getting the approval from the Inspectorate, Government of Karnataka.
 - a) Security Deposit of Rs.2,55,810 (Rupees Two Lakhs Fifty Five Thousand Eight Hundred and Ten) only paid vide receipt No.5993 dated 28.4.07.
 - b) Supervision charges of Rs.26018 (Rupees Twenty Six Thousand and Eighteen) only paid vide receipt No.5994 dated 28.4.07.
 - c) Inspectorate approval O.M. No.126-28/08-09 dated 2.5.2008 sent to 1st Respondent by Deputy Electrical Inspector, Bangalore Rural North sub division.
4. The Complainant after receipt of the additional machineries during 1st week of December 2008 has approached the Respondent Licensee by a letter dated 30.12.2008 to convert the LT installation to HT and service at 11 KV, 200 KVA power. But the Respondent Licensee, for the reasons best known to it, has not acted.
5. As rightly argued by the Counsel for the Complainant, the following points need consideration:
 - (a) The Vigilance authorities and the Meter Testing authorities have not verified records and have incorrectly booked the case of Excess load, when rated the load was found to be only 42.5 KW.
 - (b) There is no scope for booking a case under unauthorized extension of supply unde 42.05. As per the definition of "Premises", the entire area of 6.75

acres with buildings belonged to the Complainant and the entire area is one premises.

(c) Since the Complainant had fulfilled all the formalities, the onus was on the Respondent Licensee to service the installation under HT as it has obligation in terms of Section 43 of Electricity Act 2003 (Duty to Supply on Request).

6. a) The matter is maintainable in terms of KERC (Consume Grievance Redressal Forum & Ombudsman) Regulations, 2004, as the matter is governed by Section 43 and not Section 126 of the Electricity Act 2003 and thereby 42.05 and 42.01 are not applicable.

b) One of the Members of the 2nd Respondent has rightly held that the matter is maintainable and the Licensee has failed in invoking the provisions of Clause 4.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka which reads thus:

*"Where power sanction letter is issued by the Distribution Licensee on receipt of Application for supply of electricity and after execution of the required agreement by the Applicant, and after approval of the Applicant's installation, the Engineer shall commence supply of power to the Applicant under intimation to him. **If the Applicant fails to avail power supply within the time specified under Clause 3 of K.E.R.C. (Duty of the Licensee to supply Electricity on request) Regulations, 2004 (Annex-1), the installation shall be deemed to have been serviced on the date of completion of the period specified in the said clause and the Consumer shall be liable to pay Demand charges/Fixed charges as per the Electric Power Tariff in force during the initial agreement period."***

Having failed to invoke the above provisions, the Respondent Licensee cannot allege that the consumer was using excess load and unauthorisedly extended the supply etc.

7. As soon as the Complainant submitted a letter dated 30.12.2008, the Respondent License should have immediately visited the premises and should have followed the provisions of 4.08 mentioned above in para VI(7).

8. In case the consumer was not ready during the visit, the Respondent Licensee should have treated the installation as deemed to have been serviced and billed as per HT-2(a) tariff on 200 KVA contract demand. But the Licensee has failed to do so.

9. This Authority deems it appropriate in the interest of revenue to the Respondent Licensee and in the interest of justice to the Complainant that in terms of 4.08 of COS, the installation be deemed serviced on 1.1.2009 and claiming the bill at HT-2(a) tariff from 1.1.2009 to 15.5.2010, (the date of service of the installation) under HT basis by duly giving credit to the amount already paid under LT-5 tariff. The amount payable is worked out as follows:

a) The total electricity bill payable from 1.1.2009 to 15.5.2010 under HT-2(a) tariff for 200 KVA Contract Demand	..	Rs.18,73,470=00
b) The bill already paid under LT-5 tariff against RR No.N2P 4817 during this period	..	Rs.15,37,055=00 -----
c) The difference payable is	..	Rs. 3,36,415=00

Having regard to the facts and the findings of the case, this Authority allows the petition and passes the following order:

VII.

ORDER

1. The majority order passed by the 2nd Respondent in file No.CGRF/53/2010/814-819 dated 17.05.2010 is set aside.
2. The back billing claimed vide Letter No.AEE/ELE/AAO/2008-2009/3601-04 dated 12.2.2009 and Letter No.AEE(Ele)/N6/6360-64 dated 4.2.2010 is quashed. Consequently, the 50% and 1% of the back billing charges collected by the Respondent Licensee are to be refunded to the Complainant.

3. The Complainant is liable to pay a difference amount of Rs.3,36,415.00 (Rupees Three Lakhs Thirty Six Thousand Four Hundred and Fifteen) as held at para VI 9 above. The 1st Respondent will deduct this amount payable by the Complainant from the 50% and 1% of back billing charges collected and will refund the balance amount by way of adjustment against the future bills of this HT installation of the Complainant.

(S.D.Ukkali)
Ombudsman

1. Shri Rajendra Bhansali, Oswal Beverages, Bhole Farm, Hosahalli Village, Vishwaneedam Post, Magadi Main Road, Bangalore-560091.
2. The Consumer Grievance Redressal Forum, BESCO, Central Stores Premises, near ESI Hospital, Rajajinagar, Bangalore-560010
3. The Asst.Executive Engineer (Ele),N-6 Sub Division, BESCO, No.15 & 10, Doddanna School Compound, Magadi Main Road, Sunkadakatte, Bangalore-560091
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.

