

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

**Present: S.D.Ukkali
Ombudsman**

**Case No.OMB/B/G-72/10/8419
Dated 14.06.2010**

M/s.SPA Plaza Shop Owners Association,
No.1094, OTC Road,
Nagarthpet,
BANGALORE-560002
(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)
W-5 Sub Division, BESCOM
Mysugar Building, J.C.Road,
Bangalore-560002

2. Asst.Executive Engineer
H.T.Rating, M.T.Division,
BESCOM, Bangalore.

3. 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 3rd Respondent in its file No.CGRF/13/2009/591-596.

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

1. M/s.Hasthi Builders Private Limited are the builders of SPA Plaza located at 1094, OTC Road, Nagarthpet, Bangalore-560002. The Complainant is the Association of Shop Owners who have purchased the shops individually and are the consumers of electricity. The Association is a body consisting of a number of owners of commercial shops and offices managing the affairs on behalf of the owners. The installation was serviced on 30.12.2003 on HT basis on HT-2(B) tariff and assigned RR No.W5 HT-34. The individual consumers are separately metered and the Association collects from them and pays to the BESCO against this RR Number.

2. The Complainant states that he disputed the electrical bills for the month of February and March 2009 pertaining to this RR No. W5 HT-34 and made a representation on 9.4.2009 by remitting the testing fee to test the installation. Instead of referring the matter for third party inspection as required under the Conditions of Supply for the Distribution Companies in the State of Karnataka, the Licensee got the testing done through its own MT staff.

3. After the testing by the 2nd Respondent, a short claimbill of Rs.13,99,007/- was claimed vide letter NO.AEE(E)/W5/AAO/659-664 dated 13.5.2009 from the 1st Respondent on the plea that the CTs provided developed defect from September 2005 and the actual consumption was stated to be 2.5 times higher than what was recorded.

4. The CT ratio of the CTs provided was 5/5 and since the CTs developed fault, the MT staff replaced these CTs and provided new CTs with ratio 10/5 thereby changing the multiplication constant to 200 from 100.

5. The Complainant challenged the findings by the MT staff and disputed the back billing by filing a complaint with the 3rd Respondent who passed a majority order directing the complainant to pay 6 months back billing charges indicating that the future regular bills ought to be paid by multiplying by a constant of 200. **The Member appointed by KERC, Sri M.G.Prabhakar, has passed a dissenting order.**

6. Aggrieved by this majority order, the Complainant has filed this appeal complaint before this Authority praying for the following relief.

III.

PRAYER

To:

1. Quash the order passed by the 3rd Respondent.
2. Declare the action of the Licensee in not referring the dispute on the accuracy meter raised by the Complainant is bad in law: consequently
3. Set aside the demand letter No. AEE(E)/W-5/AAO/659-64 dated 13.5.2009/
4. Pass any other order/s to meet the ends of justice.

The Complaint prayed for an interim order to stay the order of the 2nd Respondent and to direct the 1st Respondent not to disconnect the installation.

After hearing both the parties on 22.01.2010 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 an interim order NO.OMB/B/G-72/2010/7681 dated 22.1.2010 came to be 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-72/2010/8022 dated 06.04.2010. The 1st Respondent, Sri B.M.Ashok and the Advocate for the Complainant, Sri Shridhar Prabhu appeared and they were heard on 14.05.2010. 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. The 2nd Respondent also was heard on 11.6.2010 and his statement was recorded.

VII. Discussion and Analysis

A. The 1st Respondent contends as under:

1. The consumer of the installation bearing RR No. W-5 HT-34 disputed consumption for the month of February and March 2009 and requested for calibration of the meter by paying calibration charges as per **30.13(c)** and a message was sent to the 2nd Respondent who conducted the testing on 24.4.2009 and gave a report No.EEE/AEE/HTR/BMAZ/2394-96 dated 24.4.2009 wherein he observed that the existing CTs of 10-5/5 were connected to 5/5 ratio and were boosted and found the ratio error of 1:2.5 i.e. 5 amps on secondary circuit realized 12.5 amps on the primary. The defective CT s were replaced by 10-5/5 CT and connected with 10/5 so that multiplying constant was 200.

2. A provisional bill No.EE(E)/MT/BMAZ/AEE(O)/09-10/2393-95 dated 28.4.2009 was received by the 1st Respondent from the Executive Engineer, M.T.Division, BMAZ, BESCOM, Bangalore wherein it was stated that the MT staff during inspection and rating of the installation noticed that the consumption was sub-normal due to faulty CT from September 2005. Hence, short claim charges were worked out to Rs.13,99,006. Accordingly, he served the notice of back billing in letter NO.AEE(E)/W-5/AAO/659-64 dated 13.5.2009 to the Complainant.

3. The Complainant did not agree and disputed the bill claimed and filed a complaint before the 3rd Respondent. The case was heard and he appeared before the 3rd Respondent and he was questioned as to why 3rd party testing was not carried out. He informed them that the 3rd party is the Electrical Inspectorate Authority **and usually they never come for inspection and generally take three to four days time depending on the work load. Therefore, in order to avoid delay and**

personal request of the SPA Association President and the General Secretary and they agreed and gave it in writing dated 24,4,2009 that they have witnessed the technical defect in the HT metering cubicle and stated that they agree to BBC/short claim charges computed as per the company rule. Further requested to rectify the defect and arrange for the power supply at the earliest.

4. The 3rd Respondent passed an order dated 31.12.2009 directing to revise the back billing charges for a maximum period of 6 months as per clause No.27.03(i) of Conditions of Power Supply.

5. Before he could study this order of the 3rd Respondent and decide on as to what action was to be taken, the Complainant filed a case before this Authority. Accordingly, he appeared before this authority on 22.01.2010, 12.05.2010 and 14.05.2010 and deposed.

6. He requested to direct the above consumer to pay the monthly electricity bill to BESCO considering meter constant as 200 as per the M.T.report to avoid loss to the BESCO and to direct to pay the short claim demanded by him immediately by rejecting the request of the Complainant.

B. The 2nd Respondent contends as follows:

1. He conducted tests during the rating on 24.4.2009 at the request of the Complainant and produced a series of documents before this Authority at the time of deposing.

2. He contends that by boosting the CTs, it was observed that CTs were faulty showing a ratio of 2.5:1 instead of 1:1 as they were connected at 5/5 ratio.

3. From these results, he concluded that the meter recorded 2.5 times less than what it would have recorded if CTs were not faulty.
4. He replaced these CTs by new CTs and connected the ratio to 10:5 raising the the multiplication constant from 100 to 200.
5. A provisional bill for the period from September 2005 to April 2009 was raised by the EE, MT Division, BESCO Bangalore. based on the report of the 2nd Respondent.
6. The 2nd Respondent argues that based on the testing/rating result the short claim demanded is in order and the consumer has to pay and also states that since new CTs are connected to the ratio of 10/5, the multiplication constant from 24.4.2009 is 200.

C. Per contra, the Advocate for the Complainant argues as under:

1. The Consumer had disputed the accuracy of the meter recording vide its representation dated 9.4.2009. In response thereto, the Complainant was asked to remit Rs.500/- towards 3rd party inspection charges which was paid as per Annexure C2 to the complainant on 16.4.2009.
2. It is important that the Licensee too disputed the accuracy/CT ratio of the meter. Therefore as per law, the Licensee ought to have referred the matter to the 3rd party inspection as per the applicable regulations.
- 3. However, the Licensee referred the matter to its own Executive Engineer, M.T.Division, who conducted the rating on 24.4.2009 as per Annexure C5 to the complaint. As per MT Division's own observation, the CT ratio existing at the time of inspection was recorded as 5/5A and was allegedly replaced by 10/5A. If this is so, it is highly untenable to back bill the installation for the previous periods. This is a procedural and legal lapse on the part of the Licensee.**

4. The Complainant was further forced by the Licensee to give letter dated 24.4.2009 under the threat of disconnection. According to the Complainant, there was no tenable reason for the Licensee/MT Division to change the CT ratio at any stage including after the inspection. The Licensee cannot back bill based on a report not given by the 3rd party inspection.

5. Admittedly, the Licensee has installed a faulty meter and therefore cannot claim any charges based on it. It is undisputed that the stickers and seals are intact and the meter is owned by the Licensee.

6. It is the duty of the Licensee under section 55 of the Electricity Act read with CEA (installation and operation of meters) regulations 2006 to supply power through a correct meter.

7. The Licensee deliberately did not refer the matter for 3rd party inspection because of the correctness of the meter would have been exposed by the 3rd party inspection.

8. In fact, after the filing of this complaint, the complainant itself has referred the matter for 3rd party inspection and requested the 3rd Respondent to await the report of the 3rd party inspection.

9. **The Government of Karnataka by its letter dated 16.12.2009 also has directed the CEIG to inspect the premises and give a report.** The CEIG vide its letter dated 23.1.2010 has asked the for payment of testing fee of Rs.1000/- which is remitted by the complainant on 28.01.2010. However, for the reasons best known to the 3rd Respondent, it went ahead with the passing of the impugned order.

10. The 3rd Respondent has failed to analyse the technical report submitted by the complainant provided by an independent consultant who was a former Member (T) of the KEB.

11. The order of the 3rd Respondent clearly records that no mahazar was drawn, no independent witness witnessed the mahazar, consumer was not supplied with the downloaded data. Therefore, its order is bad in law.

12. It is also recorded by the 3rd Respondent that there is no provision under Clause 27.03(1) of Conditions of Supply of power to back bill the installation for more than 6 months. The 3rd Respondent in the case of Institute of Chartered Accountants of India, Bangalore Chapter Vs BESCO Limited has clearly held that in the case involving CT fault etc. back billing cannot be done even for 6 months. The 3rd Respondent has gone against its own orders made in the above said case.

13. The calculations produced by the 3rd Respondent along with its order are not supported by any averments. In fact, the Licensee had not produced these calculations in its parawise reply. The 3rd Respondent on its own volition made these calculations without any data or facts produced before them. Even if it is presumed that the CT was replaced by the MT Division/Licensee after the inspection dated 26.4.2009, it is inexplicable as to why there was no change in the energy charges payable by the Complainant in the subsequent months. All this is observed by the 3rd Respondent yet is not taken into cognizance while passing the order. He urged this Authority to grant the relief/s prayed at para III above. It is observed that the 3rd Respondent, Sri M.G.Prabhakar, has given a dissent note.

VIII. Findings

1. The Complainant is an H.T. electricity consumer of the Respondent Licensee having an Association of shop owners etc. in turn supplying electricity to each shop through private meters.

2. The Complainant disputed the consumption leading to high electricity bills for the months of February and March 2009 and requested the 1st Respondent to arrange for testing of the meter by remitting to Rs.500/- testing fee.
3. **This request triggered the procedure to be followed as per clause 27.01 of Conditions of Supply of Electricity of Distribution Licensee in the State of Karnataka (COS).**
4. **The Respondent Licensee failed to follow the procedure indicated in para 3 above.**
5. a) The 2nd Respondent's contention is that the CT connected to 5/5 was faulty and the ratio was recorded as 2.5:1 from September 2005 to April 2009.

b) But when the same installation was rated on 6.9.2008, the EE N-1 Division, BMAZ, BESCOM, Bangalore has noted as follows in a letter NO.EEE/AEE/HTR CAY/BMAZ/689-693 dated 6.9.2008 addressed to the 1st Respondent:

" Meter tested for its accuracy. Found to be recording within the permissible limits of error"

- c) Against this report, how can the 2nd Respondent now say that the CTs were faulty from September 2005 and ask the Complainant to pay a huge back billing charges..
6. The contention of the 1st and the 2nd Respondents that the mahazar was drawn and obtained undertaking from the Complainant in lieu of testing in presence of 3rd party cannot be accepted for the following three reasons:

- a) One part is that the party has paid the fees for testing disputing the accuracy of the meter. This required the procedure to be followed as per 27.01 of COS.
 - b) The other part is as pointed out by the Advocate for the Complainant at para VII C (2) that the Respondent Licensee also disputed the accuracy of the meter in the reverse way that metering recorded 2.5 times low.
 - c) **The Respondent Licensee should have been doubly careful as he was reversing the claim of the Complainant in a drastic manner and therefore third party testing was very essential.**
7. This action shows that the Complainant was made to sign the mahazar under the threat of disconnection.
8. The 3rd Respondent has erred in passing the impugned order in terms of Clause 27.03 (2) of COS as this pertains to the periodical testing by the Licensee without the request from the consumer. In this case, the testing is conducted on the request of the Complainant disputing the accuracy of the meter by paying prescribed fee and, hence, the matter needs to be dealt with in terms of 27.01 of COS.

Sri M.G.Prabhkar, one of the Members has passed dissent order and has held that the matter should have been dealt as per the provisions of 27.01 of COS and that as per conditions of the License to ESCOMs they shall comply with regulations, codes, orders, directions issued by the Commission.

This Authority agrees with these views and holds that the impugned order of the 3rd Respondent needs to be set aside and the appeal Petition of the Complainant is allowed.

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

IX. ORDER

1. The majority order passed by the 3rd Respondent in file No.CGRF/13/20009/591-596 dated 31.12.2009 is set aside.
2. It is declared that failure to follow the procedures laid down at Clause 27.01 of COS is bad in law and hence the test carried out without the presence of 3rd party is held invalid and thereby the demand of back billing claimed by vide letter No.AEE(E)/W-5/AAO/659-64 dated 13.5.2009 is set aside.

(S.D.Ukkali)
Ombudsman

1. M/s.SPA Plaza Shop Owners Association, No.1094, OTC Road, Nagarthpet, 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 Asst.Executive Engineer, H.T.Rating, M.T.Division, BESCO, Bangalore
5. The Managing Director, BESCO Corporate Office, K.R.Circle, Bangalore-560001.
6. PS to Hon.Chairman, KERC
7. PS to Hon.Member(H), KERC
8. PS to Hon.Member(S), KERC
9. PS to Secretary, KERC
10. Director (Tariff)
11. Deputy Director(Legal)
12. O.C.A.

