

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

**Present: S.D.Ukkali
Ombudsman
Case No.OMB/B/G-75/10/8412
Dated 11.06.2010**

M/s.Tricom Technologies,
No.289-292, 13th Cross,
2nd Main Road, Pai Layout,
Doorvaninagar,
BANGALORE-560016
(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)
E-7 Sub Division, BESCOM
Old Madras Road,
Bangalore-560016

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 24.08.2009 passed by the 2nd Respondent in its file No.CGRF/28/2008/427-432.

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

1. The Complainant is a registered HT consumer of electricity of the BESCOM Limited, with R.R.No.E7 HT 202 engaged in providing solutions in the areas of Telecommunications., Data communications, computer Networking, Microelectronics, High Speed Digital Design Billing and Customer Care Telecom Network monitory Industrial Communication, CRM products and Signal processing.
2. The installation was serviced on 9.5.2003 with a sanctioned load of 60 KVA under HT-2(a) tariff based on the certificate issued by the Government of Karnataka as Tiny Industrial Unit.
3. The Vigilance staff of BESCOM inspected the installation on 23.2.2006 and observed that the installation is software industry but has not obtained the Certificate from IT and BT and advised the 1st Respondent to revise the bills under HT-2(b) Tariff from the date of service (from 9.5.2003 to 31.3.2006).
4. Accordingly, a back bill of Rs.1,46,682 (Rupees One Lakh Forty Six Thousand Six Hundred and Eighty Two) only was served on 21.4.2006 by notice No.230. Thereupon, the Complainant approached the 1st Respondent's office on 1.7.2006 requesting for partial payment of this back billing charges due to financial constraints. 5-installment facility was granted and immediately paid Rs.60,000 (Rupees Sixty Thousand) only on 31.8.2006.
5. The consumer approached the 1st Respondent's office to obtain meter details to be furnished to the IT BT department for claiming IT and BT certificate to claim a tariff change to HT-2(a) from HT-2(b). On 12.9.2006, he submitted IT and BT certificate dated 19.8.2006 and registration certificate dated 11.7.2006 and requested the 1st Respondent for a change of tariff and cancellation of BBC. He was informed orally that cancellation of BBC was not possible.

6. He approached the GM(T) BESCOM, K.R.Circle on 23.1.2008 and requested to withdraw the BBC and refund the amount of Rs.60,000/-(Rupees Sixty Thousand) only already paid. In the meantime, BESCOM Corporate office issued a circular No. BESOM/GM(T)/BC-19/F-1029/CYS 140/06-07 dated 10.11.2006 with clear set of guidelines in considering the tariff concession. **As per this circular, the GM, BESCOM, Corporate office vide letter No. BESCOMJ/GMT/BC-19/F-1029/07-08/15327-29 dated 12.2.2008 directed to withdraw the demand raised.** Thereupon, the withdrawal demand was sent to the EE, East Division, BESCOM, Bangalore. In turn, the proposal was sent to GM (T) who rejected the proposal vide letter No. BESCOMJ/GMT/BC-19/F-1029/08-09/5707-12 dated 11.9.2008 **by withdrawing the earlier direction issued on 12.2.2008.** This was brought to the notice of the complainant vide AEE(EI)/ESD 7/2604 dated 14.10.2008 informing the complainant to pay the outstanding dues since his claim was rejected by the Corporate office, BESCOM, Bangalore.

7. Thereupon, the complainant remitted regular bill only and he was served with a notice on 20.11.2008 to pay the balance arrears. Aggrieved by this demand, the consumer filed a complaint before the 2nd Respondent and 2nd Respondent directed not to disconnect the installation till the case was disposed off. Accordingly, the installation was not disconnected. **The 2nd Respondent passed a majority order upholding the back billing charges and the 3rd member has given a dissent order.** Based on this order another notice was sent to the consumer for making payment.

8. Aggrieved by this majority order, the Complainant filed this appeal complaint before this Authority with the following prayer:

III.

PRAYER

1. Set aside the Order passed by the 2nd Respondent dated 24.8.2009 in case No.CGRF/29/2008/427-432.

2. Uphold the letter NO.BESCOM/GMT/BC-19/F-1029/2007-08/15327-29 dated 12.02.2008 and set aside the back billing charges demanded vide (1) letter No.AEE/ESD7/AE(T) dated 21.4.2007 and (2) letter No.AEE(E)/M/F&C/SAI/2604 dated 14.10.2008 and to refund the amount already remitted with interest.

3. To award exemplary damages, to grant the cost of the petition and to pass any other order to meet the ends of justice.

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-75/2010/8027 dated 06.04.2010. The 1st Respondent, Sri G.C.Nagaraja 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.

V. Discussion and Analysis

A. The 1st Respondent contends as under:

1. The short claim as back billing was as per the directions of the Vigilance Authorities.

2. The 1st Respondent acted as per the directions and he says that the action taken is in order as directed by the Vigilance Authorities and the directions of the Corporate Office and that the complainant has to remit the balance back billing. He requested to reject the consumer's request.

B. The Advocate for the Complainant argues as under:

1) The Complainant's industry has been registered as a tiny industrial unit with Government of Karnataka, Department of Industries and Commerce. The Complainant is billed at HT-2(a) tariff since the date of service of the installation.

2) The Vigilance staff visited the installation on 23.2.2006 and observed that the installation was a software industry. Based on this visit, a back billing demand for Rs.1,46,682.00 (Rupees One Lakh Forty Six Thousand Six Hundred and Eighty Two) only was served on 21.4.2006 by the Respondent Licensee. **The Complainant further submitted that it has obtained the certificate from the IT/BT Department for the period from 9.5.2003 as an additional requirement though the certificate issued from the Department of Industries and Commerce was sufficient to bill the industry under HT-2(a) industry.**

3) The Licensee was satisfied with this explanation and withdrew the demand notice dated 21.4.2006. Thereafter, all of a sudden on 14.10.2008, BESCO once again withdrew the HT-2(a) tariff and again demanded the back billing charges.

4) Aggrieved by this demand, the Complainant approached the 2nd Respondent in case No.29/2008/427-432 which was disposed off on 24.8.2009 without assigning any cogent reason. This order is challenged by the Complainant on the following grounds:

a). Hon'ble KERC has fixed the tariff for the IT industry at HT-2(a) tariff as per its Tariff Order 2003 which was produced by the Complainant as Annexure 2. The BESCO is bound by this order of the Hon. Commission and, therefore, the BESCO had extended the HT-2(a) tariff to the Complainant from the date of its service.

b). Having given the service under HT-2(a) by adhering to KERC tariff and re-affirming the same by letter dated 12.2.2008, BESCO is estopped from contending that HT-2(a) tariff is not applicable.

c). Under Section 174 of the Electricity Act, 2003, the tariff order passed by the Commission under the Electricity Act will have overriding effect on all internal circulars, notices, communications etc. issued by BESCO.

d). Even if presuming without admitting that circulars can be relied upon to apply or alter tariff, BESCO's own Circular dated 10.11.2006 produced at 1-C of the complaint, clearly states production of certificate from Department of Industries and Commerce is sufficient for availing HT-2(a) tariff.

e). The Complainant's Advocate, therefore, requests for grant of the prayer made at Para III.

VI. Findings

A The installation RR No.E7HT202 was serviced on 9.5.2003 with 60 KVA contract demand under HT-2(a) (industrial) tariff, based on the certificate issued by the Government of Karnataka as Tiny Industrial Unit.

B. During the inspection by the vigilance authorities on 23.02.2006, following is the observation:

"It is observed that the above said installation is software, Tricom Technologies Company Pvt Ltd., They occupied from 9.5.93 from the date of service. They are getting the bill in HT-2(a) tariff. But as per BESCO order Director(T)/GM/BC.20/2003-04/F/655/CYS-21 Dt. 13.5.03, it is the mandatory for the firm to obtain Director IT and BT certificate to avail HT-2(a) tariff concession. But they don't have the same. Hence HT-2(a) tariff to be charged."

C. If the tariff orders are verified, there was mention of obtaining certificate from IT and BT Department of GOK/GOI in tariff order dated 25.11.2009. Earlier, there was no mention of obtaining any certificate in tariff order dated 27.9.2005 which was in force till 25.11.2009. Therefore,

(1) Any circular instructions of BESCO Licensee not in tune with the tariff orders; and

(2) The action of withdrawal of demand at their will and again re-claiming the back billing, without the order from KERC

are not valid.

D. Even if the guidelines issued are verified, it is seen that the guideline issued in the Circular dated 13.5.2003 have been revised by issuing another Circular No.BESCO/GMT/BC-19/F-1029/2006-07/CYS/140 dated 10.11.2006 wherein clarifications are issued. Points 1 and 2 of these clarifications read thus:

1. Certificate issued from the Director, Department of Information Technology and Bio-Technology, Government of Karnataka may be insisted from such firms, which are serviced on or after 13.5.2003 and are engaged in Software development and Hardware.

2. The firms which are serviced on or after 13.5.2003, who are engaged in software development and hardware, the benefit of industrial tariff may be extended from the date of production of necessary certificate issued from the Director, Information Technology and Bio-Technology Department, Government of Karnataka. However, short claims at regular rates (HT-2(a) – HT 2(b) tariff or LT 3 – LT 5 (tariff) may be preferred from the date of service to the date of production of certificate.

E. Based on these clarifications when the Complainant made representation to the General Manager(Technical), BESCO Corporate office, Bangalore on 23.1.2008, the

GM(T), BESCOM, vide his letter NO.BESCOM/GMT/BC-19/F-1029/2007-08/15327-29 dated 12.2.2008 addressed **to the Complainant has withdrawn the demand raised by the 1st Respondent, as the installation was service prior to 13.5.2003.**

F. Subsequently, the GM(Tech), BESCOM, Bangalore has withdrawn the approval communicated on 12.2.2008 based on a decision to adhere to the circular instructions at Circular CYS 140 dated 10.11.2006. **In this Circular, the cut-off date of 13.5.2003 is mentioned and since the installation was service on 9.5.2003, the Complainant is not liable to pay any short claim or back billing charges by adhering to these circular instructions.**

G. **The Member, Sri M.G.Prabhakar of the Forum, has rightly held that as per the Circular CYS 140 dated 10.11.2006, the complainant is not liable to pay short claim/back billing charges. This Authority concurs with this view and the Petition of the Complainant is hereby allowed and the majority order passed by the 2nd Respondent needs to be set aside.**

Having regard to the facts and the findings, this Authority passes the following order:

VII.

ORDER

1. The impugned majority order of the 2nd Respondent in file No.CGRF/28/2008/427-432 dated 24.08.2009 is set aside.
2. The decision of the Respondent Licensee in its letter No. BESCOM/GMT/BC-19/F-1029/2007-2008/15327-29 dated 12.2.2008 is upheld and the back bill claimed in letter No.AEE/ESD7AE(T) dated 21.4.2007 and letter NO.AEEE/M/(F&C)/SAI/2604 dated 14.10.2008 are

set aside and the amount remitted in this regard be adjusted in future bills of the Complainant.

3. No order on the damages and the cost.

(S.D.Ukkali)
Ombudsman

1. M/s.Tricom Technologies, No.289-292, 13thCross, 2nd Main Road, Pai Layout, Doorvaninagar, Bangalore-560016.

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

3. The Asst.Executive Engineer (Ele), E-7 Sub Division, BESCO, Old Madras Road, Bangalore-560016

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.

