

BEFORE THE ELECTRICITY OMBUDSMAN

No. 16 C-1, Miller Tank Bed Area
Vasanthnagar, Bengaluru-560 052.

Present: S.S. Pattanashetti
Electricity Ombudsman

Case No.OMB/H/G-204/2014

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M/s Geemark Laboratories,.
C/o Tushar M.Baddi,
“Arihant Park”
Near S.B.I. Keshwapur,
Hubballi-580023.

: Appellant.

VS

1. The Assistant Executive Engineer,
O & M City Sub-Division-1 HESCOM
Keshwapur, Hubballi.
(Represented by Advocate
Sri H.V. Devaraju, No.39, Shop No.24,
Mezzanine Floor, A,S,V,N,V,Bhavan
K.G. Road, Bangalore-560 009.
2. The Chairperson, CGRF, HESCOM,Dharwad
District, Hubballi.

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:Respondents.

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This is an Appeal filed under Clause 21.02 of KERC (CGRF & Ombudsman) Regulations, 2004 against the order of CGRF, HESCOM Dharwad District, Hubballi (herein after referred to as the 2nd

Respondent), in case No:ಅಇಂ(ವಿ)/ಉಲೆನಿ/ಹಿಸ/ಗ್ರಾಕುಂಕೊನಿವೇ/ಕಡತ-15
CYS/05 dated: 31-07-2017. The appellant has prayed to direct the
CGRF to review his complaint before CGRF since the matter is not
heard according to KERC (CGRF & Ombudsman) Regulations 2004, else
to accept this appeal and issue interim order against disconnection of
the installation till the final disposal of this suit before this Authority
in the interest of natural justice.

The 2nd Respondent in the impugned order dated:29-11-2014
has made the following order:

- “1. ಗ್ರಾಹಕರ ಮನವಿಯನ್ನು ಪುರಸ್ಕರಿಸಲಾಗಿಲ್ಲ.
2. ಗ್ರಾಹಕರಿಗೆ ನೀಡಿದ ಕಂದಾಯ ಕೊರತೆ ಬಿಲ್ಸ್ ವಸೂಲಿ ಮಾಡಿದ್ದು
ಕೆ.ಇ.ಆರ್.ಸಿ.2004 ರ ಕಂಡಿಕೆ 29.08ಎ ಪ್ರಕಾರ ಕ್ರಮಬದ್ಧವಾಗಿರುತ್ತದೆ”.

The statement of objections filed before this Authority on 06-
08-2018 by Respondent No.1 AEE reads as follows:

“ The 1st Respondent submits that, the Assistant Executive
Engineer, MT Division inspected the installation bearing R.R.
No.MP 9233 on 07-01-2011 found that, the Meter Reader
has read the meter as CKWH instead of CKWH – E and thereby
the MT Division, who is the competent officer of the meter
testing sent a report as to the intimation to the 1st Respondent,
while issuing the bills, the meter reader has not read as CKWH –
- E and he has read only CKWH and therefore, on the basis of
the report of the MT Division, the Assessing Officer, who is the
1st Respondent has invoked the provisions of Condition 29.08
and 29.03 of the Conditions of Supply of Electricity of

Distribution Licensees in the State of Karnataka issued a provisional demand notice dated 18-02-2012 requiring the Appellant herein to file objections as to why the difference consumption amount should not be claimed, the 1st Respondent submits that , in response to the provisional demand notice dated 18-02-2012 the appellant herein has filed its objections on 08-03-2012 and after considering the objections, the assessing officer issued a final order dated:17-04-2012, intimating the consumer to deposit a sum of Rs.2,33,854/- and on failure to deposit the same the power supply will be disconnected. The Appellant aggrieved by the final order dated 17-04-2012, passed by the 1st Respondent filed a complaint before the CGRF, Hubballi, praying for directing the Supply Company to withdraw the demand and with directions to the Supply Company to restore power supply on the ground that the demand claimed by the Supply Company for a period of 8 years, which is contrary to the Condition 29.09 (a) of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

The 1st Respondent submits that the condition 29.08 provides as to the claim of the erroneous bills and also the Supply Company requires to follow the procedure to claim the supplemental claims as provided under Condition 29.03 and accordingly, the Supply Company has issued a provisional notice before raising the demands and after considering the objections the final order and therefore, the appellant is liable to pay the demand raised by the Supply Company.

The 1st Respondent submits that the Supply Company has every right to recover as to the consumption charges, since the appellant has enjoyed the power supply without paying the difference amount and therefore, the grounds raised by the appellant are unsustainable, though the Electricity Act provides for disconnection of power supply for non-payment and however, the consumption charges has been shown in the

monthly bill and the bill itself provides time to the appellant to pay the consumption charges and therefore, the grounds raised in the appeal memo are all untenable. The appellant is liable to pay the consumption charges which is claimed as to for the difference units.

The 1st Respondent submits that, this Hon'ble Ombudsman and the Hon'ble High Court of Karnataka repeatedly held that the mistake in computing the units of consumption, the difference amount is liable to be paid by the consumer and in the similar circumstances the Hon'ble High Court of Karnataka in the case of M/s. Anriya Dwellington Apartment -VS- the Assistant Executive Engineer (Ele), BESCO and other, decided on 18th September 2017 in W.P. No.45450/2014, upholding the decision of this Hon'ble Ombudsman Order dated: 08-09-2014 in case No.OMB/B/G-182/2014/407 by relying on the decision of the Jarkhand High Court in the case of M/s. Sheo Shakti Cement Industries, Jarkhand -VS- Jarkhand Urja Vikas Nigam Ltd, Ranchi and others reported in AIR 2016 Jarkhand 98 and therefore, the appellant is liable to pay the amount and he is not entitled to any of the prayer/s as prayed in the Appeal memo.”

The Representative of the appellant has filed a memo on 06-08-2018 before this Authority which reads as follows:

“It is most respectfully submitted that the installation bearing RR No. MP-9233 was installed with a 3ph energy meter having import and export configuration parameter as alleged by the licensee. This authority may please be inclined to know that the aforesaid installation does not generate power supply from any source. Hence, the claim of the licensee that the installation in question was through an import and export enabled meter is baseless.

In order to ascertain the facts the appellant requested this authority to refer the matter to the Chief Electrical Inspector to assess the quantum of energy of the disputed meter as per the KERC Conditions of Supply clause 27.00 amended version vide Notification No.K.E.R.C./COS/D/07/10 dated 01-07-2010 published in Karnataka Gazette dated 22-07-2010 since the dispute relating to meters are required to be referred to Chief Electrical Inspector by virtue of which powers to assess the quantum of energy lying with the Electrical Inspector and unilateral decision of correctness or otherwise of meter is not sustainable in the eyes of law.

It is also submitted that it has been held by Hon'ble Karnataka High Court in various judgements that any unilateral decision about the correctness or otherwise of the meter should be referred to an authority called Electrical Inspector.

Accordingly this authority was pleased to refer the matter to the Chief Electrical Inspector and on account of this the Electrical Inspector Dharwad had communicated with the respondent licensee on 30-03-2015 to make suitable arrangements to calibrate the meter in dispute in the presence of the appellant requesting the licensee to fix the date for calibration and since the respondent licensee failed to produce the meter before the designated authority the Chief Electrical Inspector addressed a letter to the appellant stating ".... that the meter has been returned to HESCOM stores and HESCOM has not taken any measures to conduct mahazar, so witnessing of said meter was not carried out."

Looking at the above facts the licensee, with deliberate intention, suppressed the facts of the issue with a view to get orders in their favour. Therefore, in my view, when the Respondent Licensee has not come with candid facts and clean hands, he cannot claim the short claim amount with soiled

hands. If the Respondent licensee does not disclose all the material facts fairly and truly but states them in a distorted manner with a view to mislead or deceive this authority, this authority has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination on the merits. In this view of the matter, the appellant prays before this authority that the demand with regard to short claim should be rejected on the ground that the respondent licensee has suppressed material facts.”

Notices were issued to both the parties vide this office letter No.OMB/H/D/1042/2018 dated 11-07-2018 to appear before this Authority on 31-07-2018, and put forth their arguments.

This case was taken up on 28-05-2018, 31-07-2018, 06-08-2018 and finally on 14-08-2018. Advocate for Appellant and Respondent No.1 AEE along with his Advocate were present. Advocate for appellant has filed a memo along with 3 citations. Heard the arguments of both parties and perused the written submissions and documents filed before this Authority.

The AEE, MT Division inspected the installation of the appellant bearing RR No. MP 9233 on 07-01-2011 and found that the meter reader has read the meter as CKWH instead of CKWH – E and sent a report to the Respondent No.1. Based on this report of the MT Division, the Respondent – 1 who is the Assessing Officer invoked the

provisions of Clause 29.08 and 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and issued a provisional demand notice dated:18-02-2012 requiring the appellant to file objections as to why the difference in consumption amount should not be claimed. The appellant in response to the provisional demand notice filed his objections on 08-03-2012. After considering the objections of the appellant the Assessing Officer issued a final order dated: 17-04-2012 intimating the consumer to deposit a sum of Rs.2,33,854/- All the procedure mentioned in Clause 29.03 and 29.08 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka has been followed by the Respondent 1 before issuing the final order dated: 17-04-2012. The appellant aggrieved by the final order of the Respondent – 1 filed a complaint before the CGRF praying to direct the supply company to withdraw the demand notice and to restore power supply. The CGRF, Hubballi after giving opportunity to both the complainant and the licensee has on 29-11-2014 dismissed the complaint of the complainant and held that the demand notice issued by the Respondent No.1 is proper.

The appellant aggrieved by the order of the CGRF dated: 29-11-2014 has filed an appeal before this authority on 22-12-2014. The appellant in his memo filed on 06-08-2018 has said that this authority was pleased to refer the matter to the Chief Electrical Inspector. On

perusal of all the papers in the file it is found that there has not been any request from the appellant to this authority for referring the matter to the Chief Electrical Inspector for calibrating the energy meter. What can be presumed from the letter of Electrical Inspector of Dharwad dated 30-03-2015 to the AEE, O & M Sub-Division, Hubballi ie Respondent – 1 is that it is the appellant M/s Geemark Laboratories who has written letter to the Chief Electrical Inspector to Government to arrange for calibrating the energy meter. In response to this letter the AEE has replied to the Electrical Inspector that the meter has been returned to HESCOM stores. If the intention of the appellant was to get the meter calibrated he could have made this request to the CGRF when the matter was still pending before CGRF. On the contrary, after the disposal of the complaint by the CGRF, fully knowing well that the earlier meter has been replaced by new meter the appellant has directly communicated with the Chief Electrical Inspector to Government to arrange for calibration of the energy meter. This goes to show that he is trying to take advantage of the fact that the meter has been changed by the Respondent – 1 AEE for administrative reasons. The appellant could have also made the request for calibration of the energy meter when he was issued provisional demand notice dated: 18-02-2012 by the Respondent -1 AEE.

All the procedures required to be followed for issuing the demand notice under the provisions of Clause 29.08 and 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka have been followed by the Respondent – 1 AEE before issuing the final order. The appeal filed by the appellant does not deserve to be considered.

No.OMB/H/G-204/2014/D-1077

Dated:14-08-2018

ORDER

Taking into account the above facts and oral and written averments made by both the Advocate for appellant and Advocate for Respondent No.1, AEE, the appeal is hereby dismissed.

Sd/-

(S.S.Pattanashetti)
Electricity Ombudsman.

To:

- 1) M/s. Geemark Laboratories
C/o Tushar M.Baddi, "Arihanth Park"
. Keshwapur,Hubli-580023
- 2) The Assistant Executive Engineer, City Sub-Division No.3
HESCOM, Industrial Estate Gokul Road
Hubballi.
- 3) Sri H.V. Devaraju, No.39, Shop No.24,
Advocate, Mezzanine Floor, A,S,V,N,V,Bhavan
K.G. Road, Bangalore-560 009.
- 4) The Chairman, CGRF, HESCOM,Dharwad
District, Hubballi.
- 5)The Managing Director, Corporate Office, HESCOM,P.B Road,
Navanagar,Hubli-30
- 6)PS to Hon'ble Chairman,KERC

- 7)PS to Hon'ble Member (A),KERC
- 8)PS to Hon'ble Member(M),KERC
- 9)PS to Secretary, KERC