

**BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM,
HESCOM, BELAGAVI**

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CASE NO. 24/2021

ORDER NO: BGM/CGRF/SEE/DCA/AAO/SA-2/2021-22/

7075-77

DATE: ... **5 MAR 2022**

BETWEEN :

1) Sri. Gourav. B. Shah,
R/o Nehru Nagar,
Belagavi.

.....Complainant.

AND

1) Asst. Executive Engineer (Ele),
O&M City Sub-Division-3, HESCOM,
Belagavi.

.... Respondent.

Memorandum of complaint under section 42(5) of Electricity Act-2003 and under Clause No. 4.22 (f) of K.E.R.C. (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2004 and Amendments 2013 :-

Sri. Gourav. B. Shah a registered consumer having availed power supply for running his Business (Vide R. R. No. CCL-25860), upon receiving a supplemental bill of Rs. 8,74,276/- on dated 22.07.2021 is aggrieved and filed complaint before this forum.

The Installation bearing R. R. No. CCL-25860 is coming under the jurisdiction of CGRF Belagavi District as per KERC Ammendment 2013 and O. M No. HESCOM /GM(T)/EE-4/AO/2013-14/CYS-769 Dtd. 16.07.2013 issued by the Corporate Office HESCOM, Hubballi.

A. Brief history of the case :-

1) Sri. Gourav. B. Shah, (hence forth to be refered as complainant) has availed power supply for running his Hotel Business Vide R. R. No.



CCL-25860 under commercial tariff i.e. LT-3. The complainant availed the power supply on dated 25.02.2016 with sanctioned load of 20 KW.

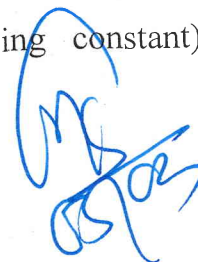
- 2) The load of the connection being 20KW, it was necessary to connect the meter through C.T (Current Transformer) of 50/5Amps ratio, hence a CT of 50/5 Amps was also fixed along with energy meter for the said connection. Hence the monthly difference of final reading and intial reading of the energy meter should have been multiplied by multiplying constant $K=10(50/5=10)$.
- 3) Where as, upon routine Inspection of the said meter of the complainant by the sub ordinate officers of Asst. Executive Engr(Ele.) City Sub Division-3 Belagavi (hence forth to be refered as respondent) it is noted by respondent that the bills served to the consumers were being claimed for the difference of final and intial reading of the energy meter every month without multiplying such difference by "10", right from date of service i.e. from 25.02.2016 till Februrary-2021.
- 4) Consequent to the above said findings the respondent has claimed the bill of Rs. 8,74,276/- for the period from 25.02.2016 till Feb-2021.
- 5) The respondent has issued the supplemental bill to the complainant Vide his Office Ltr. No. 4814-15 Dated 17.02.2021, and has asked the complainant to file his objections if any.
- 6) The complainant upon receiving the said supplemental bill has objected for it before the respondent on dated 20.03.2021.
- 7) The respondent has heard the objections of complainant on dated 20.03.2021 and on dated 24.06.2021 and has passed a final order asking complainant to pay Rs. 8,74,276/- Vide his Order No. 916-23 dated 22.07.2021.



- 8) Aggrieved by the Final Order of the respondent Vide No. 916-23 Dated 22.07.2021 the complainant has filed an appeal petition dated 16.08.2021 before this forum.

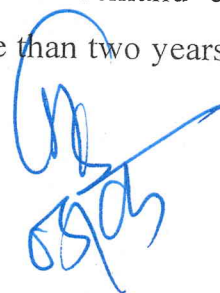
B. The complainant through his representative Sri. Tushar Baddi R/o Hubli on dated 16.08.2021 has contested the supplemental claim dated 17.02.2021 and final order dated 22.07.2021 of respondent and requested to issue directions to withdraw the Final Bill / Final Order on the following grounds.

- 1) Since, the respondent claims that the multiplying constant of $K=10$ was not considered for claiming the monthly bills from the complainant, and claims that they came to know about such fault only during Feb-2021, the respondent raises the issue that, wherever such metering issues arise, the testing of meter should be done by Govt. Electrical Inspectorate treating them as third party. In the present case, this being short claimed bill, HESCOM was aggrieved, hence respondent should have referred the case to Govt Electrical inspectorate. The respondent has not done this, where as, as per law and court orders, that any unilateral decision about the correctness or otherwise of the meter should be referred to competent authority i.e. Electrical Inspector.
- 2) The complainant further argues that the respondent, his accounts staff, his Internal Audit Wing should have taken note of it, and should have corrected the bills then only, hence claims that it is the fault on behalf of the licensee i.e. respondent in this case, hence claims that to save his subordinates, the respondent has wrongly claimed bill from the complainant.
- 3) The complainant further argues that , in terms of clause 4.9 of KERC Code-2004 and it's amendments, the licensee i.e. respondent in this case should have provided meter card and should have maintained it with complainant ; there by it would have been clear and transparent as far as meter readings and meter constant (multiplying constant) etc are



concerned, and hence such erroneous billings as claimed would have been avoided and complainant too would have been aware of such billings etc. Where as the complainant (through his representative) claims that the meter card was neither provided nor was maintained.

- 4) The representative of the complainant further argues that, "even assuming but not admitting that there exists a liability to pay back billing charges, the liability could not have been more than six months prior to the detection of incorrect readings in terms of regulations 28.02 of Indian Electricity Act 1910. Where in the maximum period for back billing shall not be more than six months.
- 5) The complainants puts it this way. "The entire responsibility is to be fixed on the respondent and not on the complainant" since the mistake is admitted by the licensee. Even if it is presumed that the alleged bill is based on the facts, the bill is not binding on the complainant, as it has resulted because of negligence and mistakes on the part of respondent and his subordinates.
- 6) The complainant has placed following points before the forum .
 - (a) The complainant is running a commercial unit, (a restaurant) and the prices of the products supplied to the customer are based on the input costs and if such input cost (Electricity charges claimed as supplemental charges in the present case) are claimed after a gap can't be recovered from the customers retrospectively.
 - (b) The complainant has referred the case of "Lucknow Development Authority" V/s M. K. Gupta AIR-1994 SC-787, and Rathi Memon's Union of Indra(2002)3 SCC-714, 2001, SCC(CRI) AIR-2000 SC-1333.
- 7) The complainant further referred the Judgement of the full bench of the Hon'ble Bombay High Court in Civil Appellate Jurisdiction, where in it is held that " the Distribution Licensee cannot demand charges for consumption of Electricity for a period of more than two years preceding



the date of the first demand of such charge” and hence argues that the bill claimed by respondent in the present case beyond a period of 2 years from the date is illegal one.

- 8) Further the complainant (through his representative Sri. Tushar Baddi) has submitted his additional submission before the forum on 10.02.2022, where in it is pointed out that, the complainant noted that (upon receiving the records produced / handed over by respondent to the complainant viz. the service certificate, in the form of test report) his installation was serviced using whole current meter of capacity 3X5.30 Amp. Hence argues that there was no question of providing CT (multiplying constant).
- 9) The complainant has submitted the copy of the judgement delivered by Hon'ble High Court of Judicature at Bombay Civil Appellate Jurisdiction in Maharashtra State Electricity Distribution Company Limited V/s The Electricity Ombudsman and the sub divisional officer BSNL in Writ Petition No-10764 of 2011 (Bench of three) (Full Bench) to consider.

C. The respondent has submitted written statements and has argued orally also on dated 07.09.2021 and on dated 03.12.2021.

The contentions of respondent in response to the arguments put up by the complainants are taken up in coming paras.

1. The respondent claims that while servicing the installation of the complainant on 25.02.2016, the meter, CT and connections etc are verified / calibrated by Asst. Executive Engr(Ele.) LT Rating Sub Division Vide report No. 15478 dated 15.01.2021 and Ltr. No. 49044 dated 15.02.2016. During this calibration i.e. during pre-commissioning test of the meter / CT etc., the meter constant was mentioned as 10, where as by over sight this meter constant was entered as '1' in billing system.



2. The respondent claims, that the supplemental bill is raised in accordance with the provisions of conditions of supply Vide Clause-27.03 and clause 29.08.
3. The respondent further submits that the subject here is not about correctness of energy meter provided to the installation, neither respondent has claimed the bill as a consequence to erroneous recording by the meter, hence it is not necessary to refer the case to third party i.e to Electrical Inspectorate.
4. The respondent claims here that the issue here is about not taking multiplying constant as "10" and once observed by respondent that multiplying constant is taken as "1"(One) in place of "10" the respondent claims they claimed the bill for the part of the energy that was not filled .
5. The respondent clarifies that the Back Billing Period is limited to six months only in case of misuse of tariff, un-authorized use, or in case of in-accurate meter recording (i.e slow recording etc), where as in present case, the actual energy utilised by the complainant is billed 09 times lesser because of considering wrong meter constant.
6. Respondent claims, they got the meter / metering equipments / accessories tested / calibrated by Asst. Executive Engr(Ele.) LT Rating on 15.01.2021 also, where in meter constant is mentioned as "10" in the rating report, respondent adds that the consumer has witnessed the calibration and has put his Signature on the rating reports.
7. Likewise, respondent claims, the meter / accessories etc. are Tested / calibrated by Asst. Executive Engr(Ele.) LT rating Sub Division during pre-commissioning test i.e test carried out before servicing the installation, where in again the LT Rating Sub Division has mentioned meter constant as "10" there also the complainant has witnessed the calibration and has put his signatures. The respondent has produced both the rating reports.



Handwritten signature in blue ink, possibly reading 'MS' and '05/03'.

8. The respondent revealed that the complainant was involved in theft of electricity and was booked vide CR / FIR No. 01/21 Dated 02.01.2021 and a penalty of Rs. 1,89,371/- was claimed. Like wise respondent claims that the complainant was aware of himself receiving very less bill compared to his actual energy consumption, however he kept quite deliberately, rather as a responsible citizen, he should have raised a query to check his meter.
9. The respondent clarifies that, there is mistake on the part of concerned officials / officers of his office, due to which this short billing has happened, however the respondent clarifies further that HESCOM has the mechanism to punish such erring / negligent officials / officers on it's own, where as since complainant has consumed the energy as calculated considering multiplying constant as "10" hence its genuine that the complainant pay the billed amount of Rs. 8,74,276/-.
10. On 03.12.2021, the respondent has submitted additional paras in support of his action of issuing supplemental claim where in the respondent (under clause-2) states that the " the period of limitation of 2 years would commence from the date on which the Electricity charges became first due, under sub section (2) of section 56. The respondent has argued put on record that the above said provision restricts the right of the licensee company to disconnect Electricity Supply due to non-payment of dues by the consumer, unless such sum has been shown continuously to be recoverable as arrears.
11. The respondent referred following Judgement in support of his stand of claiming billed amount.
 - a. Electricity ombudsman Order Copy, Case No. OMB/B/G-182/2014/407 Dated. 08.09.2014. in the case of M/s Anriya Dwelling Apartment association Bangaluru V/s the Asst. Executive Engr(Ele.) BESCOM and the chairperson CGRF BESCOM, where in an amount of Rs. 57,79,404/- was claimed



09/03

from 04-06-2005 to 06-04-2013, in a similar case where meter constant was not considered while billing the energy during the said period. **The Electricity Ombudsman has upheld the order of CGRF.**

- b. The respondent further quotes the judgement of ombudsman in a similar case of meter connections of M/s Naveen Hotel Bhatkal Vide judgement No. OMB/H/G-349/2019 Dated. 14.11.2019 between M/s Naveen Hotel Bhatkal V/s the Asst. Executive Engr(Ele.) Bhatkal and Chairman HESCOM, **wherein a supplemental claim of Rs. 1,81,88,063/- was upheld by ombudsman.**
- c. The respondent further quotes the judgement of Supreme Court Civil Appeal No. 1672 of 2020 (arising out of SLP Civil No. 5190 of 2019), Asst. Engr D-1 Ajmer Vidyut Vitaran Nigam Ltd. And ANR VS Rehamatullah Khan Allas Rahamulla in the reportable Judgement, where the similar case of claiming supplemental bills for more than two years is heard and disputed as follows.

“ In the present case, the period of limitation would commence from the date of discovery of mistake i.e. 18.03.2014; The Licensee Company may take recourse to any remedy available in Law for recovery of the additional demand, but is barred from taking recourse to disconnection of Electricity Supply under Sub Section (2) of Section 56 of the Act”.



D. On going through the Appeal Petition statements, and argument of complainant and contention of the Respondent, the following points arise for our consideration.

1. Whether it was necessary to get the meter tested by third party i.e by Govt Electrical Inspector to ascertain its correctness .

Whether the respondent erred in claiming the supplemental bill without getting the meter tested by the third party i.e. Govt Electrical Inspectorate.?

2. Whether the respondent should have billed the installation (RR. Nos) of complainant for such short billing only for six months from date of finding of mistake?
3. Whether the respondent is refrained from recovering any such due bill after two years from the date when such issue becomes first due, as per clause No. 29.08 of conditions of supply.

E. Our answers to the above points are as follows.

1. For point No-1, our answer is , it was not necessary to get the meter tested by third party i.e. Govt Electrical Inspectorate, and that the respondent has not erred in claiming the bill without getting the meter tested by Govt. Electrical Inspectorate.

The forum came to above conclusion based on following grounds.

- a. The respondent has produced the records for having conducted pre-commissioning test in the presence of complainant where multiplying constant is shown as "10" for this the complainant has not objected like wise the respondent has produced it on record for having conducted the calibration / testing of meter during January-2021 itself in the presence of complainant, where in again multiplying constant is shown as "10"; here also the complainant has not objected, neither the complainant disputed regarding multiplying constant.



- b. The Court Orders and clauses in Conditions of Supply speak about getting the meter tested by Govt. Electrical Inspector as third party to know the accuracy of the energy meter, whenever disputed by either of the party.

In the present case the issue is not about accuracy of the meter recording neither the respondent claimed that the meter was recording slow.

The issue here was about taking multiplying constant. Wherever current transformer (CT) is connected as an accessory to energy meter, the difference of final reading and initial reading of energy meter for any given month is multiplied by the meter constant to arrive at the figure of energy consumed by the consumer. In the present case a CT of 50/5 Amps is connected as an accessories to existing energy meter, hence multiplying constant in this case becomes "10" for calculating the energy consumed by the complainant.

The respondent claimed that while calculating the energy consumed by the complainant the multiplying constant is taken as "1" (One) in place of "10" (Ten) by oversight / mistake and hence he has claimed charges for the quantum of energy that was not billed.

- c. The complainant has never said through out his appeal and through out his arguments that the CT (Current Transformer) was not connected as an accessory of the energy meter fixed to his R.R.No.

Neither the complainant has disputed about the ratio of CT as "10".

That's why, the issue, here was not about accuracy of meter, and complainant has not disputed the ratio of CT, hence it was not necessary to get the meter tested by Govt. Electrical Inspectorate.

In the light of above facts, the respondent has not erred in claiming the supplemental bill.



2. For point No-2 our answer is in negative.

The forum came to this conclusion based on following points.

- a. The maximum period for back billing is fixed as six months only wherever,
 - i. Misuse of tariff is found.
 - ii. Un-authorized use of Electricity is found.
 - iii. Meter found slow recording [where time and date from Which such meter commenced slow recording are not available].

In all above cases, it becomes not possible to know the period during which such misuse /unauthorized use / slow recording has commenced. Hence the clause provided for back billing such cases for maximum period of six months.

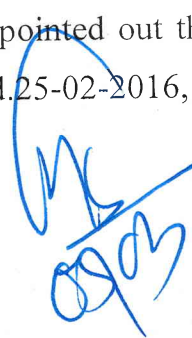
Where as in the present case, the period for which such short billing is done, can be ascertained, hence this clause of billing (Installation of complainant) for six month only, can't be applied here.

3. Our answer to point No. 3 is in negative.

The forum came to this conclusion based on following points.

- a) While objecting to the supplemental claim, the complainant has objected for billing his installation for more than two years citing various clauses of Condition of Supply and Court Judgements .

It appears that the Complainant has misconstrued the above Section and Clause of I.E. Act 2003 and Conditions of Supply. The Clause No.29.08(a) of Conditions of Supply says that the Licensee shall not recover any arrears after a period of 2 years from the date when sum became first due. No where it is mentioned that the Licensee shall not recover any arrears after a period of two years from the date of service of installation. The Respondent has rightly pointed out that consequent to receipt of Rating report No.49044, dtd.25-02-2016, the demand of



Supplemental Claims dated 17-02-2021 served to the Complainant became first due.

In this regard, the Forum wishes to rely upon the judgement of Hon'ble Supreme Court of India in the case of Assistant Engineer(D1), Ajmer Vidyut Vitaran Nigam Limited versus Rahamatullah Khan alias Rahamjulla in Civil Appeal No. 1672 of 2020 dtd.18-02-2020 arising out of SLP(Civil) No.5190 of 2019 wherein the Supreme Court of India has defined on the terms of Section 56(1) and 56(2) of I.E.Act 2003 and Conditions of Supply with regard to the word "The Licensee shall not recover any arrears after a period of 2 years from the date when such sum became first due" as follows.

- (i) The term "due" refers to the amount for which the demand is raised by way of a bill. The term "first due" would therefore imply when the demand is raised for the first time. The bill raised by the Licensee Company would be the starting point for exercise of power under Sub-Section(1) of Section 56.
- (ii) As per Sub-Section(2) of Section 56, the bar limitation would be two years from the date when the first bill is issued.
- (iii) In a case of mistake, the starting point of limitation should be the date when mistake is discovered.
- (iv) As per Section 17(1)(c) of the Limitation Act, 1963, in case of a mistake, the limitation period begins to run from, when the mistake is discovered for the first time.
- (v) The Section 56(2) do not preclude the Licensee Company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bonafide error.




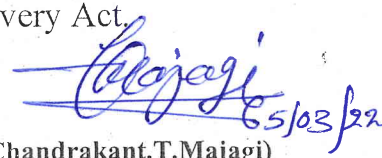
In the instant case, the Licensee Company discovered the mistake of billing with regard to non-billing of some portion of electricity consumed by the Complainant during Feb-2021 and the Respondent demanded Supplemental Claims on 17-02-2021. Hence, the Limitation Act do not apply to this Supplemental Claims dated 17-02-2021.

In view of above conclusion, the CGRF, HESCOM, Belagavi do hereby pass the following order.

ORDER

- (1) The Appeal Petition dated 16-08-2021 filed by the Complainant before CGRF, HESCOM, Belagavi against the Claims (made by respondent) dated 22-07-2021 are hereby dismissed.
- (2) The Complainant is hereby directed to make payment of (Claims made by respondent on Dated 22.07.2021) Rs.8,74,276/- (Rupees Eight lakhs seventy four thousand two hundred seventy six only) pertaining to RR.No.CCL-25860 at the office of the Respondent within 15 days, failing which the Respondent is at liberty to take action as per HESCOM rules and as per Revenue Recovery Act.


(Shareefuddin Ahmed)
Member of CGRF,
Belagavi District and
Deputy Controller of Accounts,
O&M Circle, HESCOM,
Belagavi.


(Chandrakant.T.Majagi)
Member of CGRF,
Belagavi District
Nominated by KERC.,


(Giridhar Kulkarni)
Chairman of CGRF,
Belagavi District and
Superintending Engineer(Ele),
O&M Circle, HESCOM,
Belagavi.

Copy forwarded for information and needful to :-

- 1) The Executive Engineer (Elecl), O&M Urban Division, HESCOM, Belagavi.
- 2) The Asst.Executive Engineer (Elecl), O&M City Sub-Division-3, HESCOM, Belagavi is directed to take necessary action as mentioned in this order.
- 3) Sri. Gourav. B. Shah, CTS No. 4834/29, R/o Nehru Nagar, Belagavi .

