

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF MARCH 2022

BEFORE

THE HON'BLE Dr. JUSTICE H.B.PRABHAKARA SASTRY

WRIT PETITION No.3470 OF 2015 (GM-KEB)

BETWEEN:

M/s. Rameshwari Wires Pvt. Ltd.,
(A private limited company
Incorporated under the
Companies Act, 1956),
Regd. Office at 7,
G, 3rd Street, Jogypalya, Ulsoor,
Bengaluru-560 008.

And also at :
Plot No.8 C-1,
KIADB Industrial Area,
Hoskote-562 114.

.. Petitioner

(By Sri Shridhar Prabhu, Advocate)

AND:

1. Bangalore Electricity Supply
Company Limited (BESCOM),
(A Government of Karnataka
Company incorporated under
the Companies Act, 1956),
Registered Office at K.R.Circle,
Bengaluru-560 001.
2. The Asst.Executive Engineer (El)
Bangalore Electricity Supply
Company Limited,
O & M Sub Division,
Hoskote-560 114.

3. The Executive Engineer (El),
Meter Testing Division,
Bangalore Electricity Supply
Company Limited,
3rd Floor, Crescent Towers,
Crescent Road,
Bengaluru-560 001.
4. Chairperson,
Consumer Grievance Redressal Forum,
Office of the Superintending Engineer,
BESCOM East Circle,
No.12, Curve Road,
Tasker Town,
Bengaluru-560 051.
5. The Electricity Ombudsman,
(Established under the
Electricity Act, 2003)
9/2, 6th Floor,
Mahalakshmi Chambers,
M.G.Road,
Bengaluru-560 001.

.. Respondents

(By Sri G.C.Shanmukha, Advocate for
R-1 to R-3,
Notice to R-4 and R-5 dispensed with
Vide Court order dated 12.04.2018)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India praying to issue a writ of certiorari or any other appropriate writ, order or direction to quash the order dated 24.11.2014, passed by the 5th respondent in Case No.OMB/B/G-179/2014/443, at Annexure-A and to issue appropriate writ, order or direction to quash the Demand Notice bearing No.AEEE/H/AE(T)/2012-13/107-11 dated 20.04.2013, for Rs.2,15,345/- issued by the 2nd respondent, at Annexure-B and to issue appropriate writ, order or direction to quash the demand letter dated 2nd January 2015, received on 16th January 2015, order No.Sa.Ka.Ai.E(E)/H/SE/(E)/2014-15, is produced as Annexure-C and to grant cost of the writ petition and to pass any other appropriate writ, order or direction as the Hon'ble Court

deems fit to grant, under the circumstances of the case, in the interest of justice.

This Writ Petition coming on for Final Hearing through Physical Hearing/Video Conferencing Hearing, this day, the Court made the following:

ORDER

The present petitioner is an electricity consumer of Bengaluru Electricity Supply Company Limited (hereinafter for brevity referred to as `BESCOM'), with the electricity installation bearing R.R.No.HP 1898, was admittedly serviced on 30.06.1988 with a sanctioned load of 81.11 HP under LT-5 Tariff Schedule. The Meter Testing Division (MTD) inspected the said installation on 02.02.2013 and found, (i) the CTs recording was slow by 35.13%, and (ii) need to replace existing CTs 50/5A by higher capacity. Based on the said report, the O & M Sub-Division of BESCOM (respondent No.2) on 20.04.2013 raised a back-bill against the petitioner for a sum of ₹2,15,345/-. According to the petitioner, though the Meter Testing Division recommended for replacement of the faulty parts, till date, the O & M Sub-Division of BESCOM has not

replaced the same. The O & M Sub-Division through its provisional back-billing dated 20.04.2013 (Annexure-`B'), asked the petitioner to pay a sum of ₹2,15,345/- within thirty days of the said bill in case if he does not submit his explanation to the provisional bill. The petitioner claims that he has submitted his objections to the said provisional bill as per Annexure-`H'. In spite of the same, since the respondents insisted for the payment of the bill, the petitioner-Company preferred a complaint before the Consumer Grievance Redressal Forum (hereinafter for brevity referred to as `CGRF'), of the BESCO, as per Annexure-`L'. After hearing both side, the CGRF by its order dated 02.06.2014, passed in case No.CGRF/02/2014, set aside the complaint filed by the complainant and held that the complainant has to pay 50% of the back-billing claim immediately and the balance amount shall be payable by it in four equal installments without interest.

2. Aggrieved by the said order of CGRF (respondent No.4 herein), the petitioner herein preferred an appeal

under Clause 22.02 of KERC (CGRF & Ombudsman) Regulations, 2004 before the Electricity Ombudsman (respondent No.5 herein) in case No.OMB/B/G-179/2014/443 (as per Annexure-`P'). The said Ombudsman after hearing both side, by its order dated 24.11.2014 (Annexure-`A'), dismissed the appeal, however, the respondent No.1 was directed to replace the defective meter within one month from the date of settling the BESCOM electricity bills. Challenging the same, the complainant before the CGRF, who was the complainant before the Ombudsman, has preferred this writ petition.

3. The respondent Nos.1 and 2 are being represented by its learned counsel. The respondent No.3 though was served, has not engaged the services of learned counsel on its behalf. Vide Court order dated 12.04.2018, the notice to respondent Nos.4 and 5 is dispensed with.

4. Heard the arguments of learned counsel from both side.

5. At this stage, learned counsel for respondent Nos.1 and 2 submits that he has filed Vakalat for respondent No.3 on 11.03.2022, however, the registry has shown in the cause list that Vakalat in respect of respondent No.3 has not been filed till date.

6. Learned counsel for the petitioner while reiterating the contentions taken up by him in the memorandum of petition mainly contended that the impugned action of respondent No.2 demanding the back-billing charges was without passing the final orders as per Clause 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka (hereinafter for brevity referred to as 'CoS'). Learned counsel further submits that, though he has raised various other contentions, including not drawing of mahazar and unacceptability of alleged slow recording of the meter, however, he would canvas on those points if found necessary after the arguments of learned counsel for the respondents. However, he did not address his reply arguments.

7. Learned counsel for the respondents reiterating the contentions taken up in their statement of objections submitted that respondent No.2 has not yet passed a final order and once such final order is passed only then an appeal would rise under Section 127 of Electricity Act, 2003, however, the present petitioner even after filing his objections to the provisional notice, has rushed to CGRF immediately.

8. The above submissions of the learned counsels, more particularly of the learned counsel for respondent Nos.1 and 2, itself go to show that the impugned demand of back-bill at Annexure-`B' is only a provisional order and the final order demanding the payment of back-bill is yet to be passed. As could be noticed from Annexure-`B' also, the said document is specifically shown as "provisional back-bill". Thus, even according to the respondents, the said demand for payment of the alleged difference amount was only a provisional bill and for objections if any, the petitioner had an opportunity to lodge the same.

9. As could be seen from the above, the petitioner herein, as a consumer, has lodged his objection as per Annexure-`L'. Nothing is placed before this Court from either of the parties to show that what action was taken upon the said objections filed by the petitioner. There is nothing on record to show that the petitioner was given an opportunity of hearing or the respondents, after considering the objections at Annexure-`L', have passed any final order, which final order was warranted to be passed under Clause 29.03 of CoS.

10. Learned counsel for the petitioner though submits that no opportunity of hearing was given to him and that no final order was passed, learned counsel for respondent Nos.1 and 2 submits that he does not have any material to make submission that the objections filed by the petitioner as per Annexure-`L' was considered by the respondents-authorities and any final order was passed as per Clause 29.03 of CoS.

11. Clause 29.00 of CoS speaks about bills payment/recovery of power supply charges. Clause 29.03 of CoS reads as below :

“ 29.03 : Supplemental claims: For preferring the supplemental claims, the Licensee shall serve a provisional Assessment order with 15 days' notice to the Consumer to file his objections, if any, against the provisional Assessment order on account of faulty meter or short claims caused due to erroneous billing and obtain his reply. After considering the objections of the Consumer, the Licensee shall issue the final order. The Consumer shall be intimated to make the payment within 15 days of the date of intimation, failing which, the power supply to the installation shall be disconnected and such amount shall be deemed to be arrears of electricity charges. The Licensee shall indicate in the final order, the provisions of K.E.R.C. (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004.”

Both parties did not deny that a back-billing at Annexure-`B' falls within the meaning of “Supplemental claims” under Clause 29.03 of CoS. For such a claim, as per Clause 29.03 of CoS, it was incumbent upon the

respondent No.2-authority to consider the objections of the consumer and then issue a final order. Admittedly, since there is nothing on record to show that the objections at Annexure-`L' filed by the petitioner was considered by respondent No.2 and admittedly when there being no final order passed in that regard, the act of the petitioner running to CGRF and thereafter to the Ombudsman (respondent Nos.4 and 5 respectively), was highly pre-mature and a hasty act. Though at the earliest point of time, the respondent No.2 would have taken a contention before the CGRF or Ombudsman about the maintainability of the complaint or the appeal by virtue of non-passing of a final order under Clause 29.03 of CoS, however, for the reasons best known to them, they did not take any such contention, rather, contested the matter.

12. Learned counsel for respondent Nos.1 and 2 also submits that, he has no material before him to submit that respondent Nos.1 and 2 or respondent No.3 have taken any such contention regarding maintainability of the complaint

or the appeal before respondent No.4 and respondent No.5 respectively. Still, considering the facts and circumstances of the case, it has to be held that, merely because the petitioner did not wait till passing of the final order under Clause 29.03 of CoS and rushed to prefer a complaint before the CGRF (respondent No.4), he has waived his right to wait for the drawing up of final order and challenging the same.

Furthermore, even the contention of respondent Nos.1 and 2 through their statement of objections filed in this petition is also that the petitioner ought to have waited till the passing up of final order. In such a circumstance, the futile exercise undertaken by both petitioner and respondent Nos.1 to 3, before respondent No.4 and respondent No.5 in preferring a complaint and an appeal, has to be taken as a futile exercise and the order passed by both respondent No.4 and respondent No.5 at Annexure-`N` and Annexure-`A` respectively would not carry any significance.

Ordering accordingly, by setting aside the order passed by respondent No.4 - Consumer Grievance and Redressal Forum, Bengaluru Rural, in case No.CGRF/02/2014, dated 02.06.2014, vide Annexure-`N` and the order passed by respondent No.5 - Electricity Ombudsman, in case No.OMB/B/G-179/2014/443, dated 24.11.2014, vide Annexure-`A`, the matter is remanded to respondent No.2 - O & M sub-Division, Bengaluru Electricity Supply Company Limited, to pass appropriate final order in accordance with law upon the provisional order for back-billing at Annexure-`B` after considering the objections filed to it by the petitioner as per Annexure-`H` at the earliest, but, not later than six week from today.

**Sd/-
JUDGE**

bk/