

D-644

# BEFORE THE ELECTRICITY OMBUDSMAN

9/2, 6<sup>th</sup> Floor, Mahalakshmi Chambers, M.G Road, Bangalore – 560 001

**Present: B.N.Krishnaiah  
Electricity Ombudsman**

**Case No.OMB/C/G-225/2015**

**Dated the 29<sup>th</sup> February 2016**

Between :

1. Sri M.D.Babjan,  
S/o Abdul Rehman,  
Aged about 65 years,  
Proprietor,  
Diamond Auto Works,  
Near Sugar Factory Circle,  
M.C.Road,  
Mandya – 571 402.

2. Sri Siddappaji,  
S/o late Gurumurthachar,  
Aged about 60 years,  
Proprietor,  
Gurudeva Spring Works,  
Near Sugar Factory Circle,  
M.C.Road,  
Mandya – 571 402.

3. Sri Iqbal Ahamed,  
S/o Sattar Sab,  
Aged about 60 years,  
Proprietor,

Bangalore Auto Works,  
Near Sugar Factory Circle,  
M.C.Road,  
Mandya – 571 402.

4. Sri Amjad Shariff,  
S/o Ahamad Shariff,  
Aged about 35 years,  
Proprietor,  
Sahriff Tyre Works,  
Near Sugar Factory Circle,  
M.C.Road,  
Mandya – 571 402.

5. Sri Sirajuddin,  
S/o Gaffar Sab,  
Aged about 40 years,  
Dastageer S/o Gaffar Sab,  
Brother of Sirajuddin,  
Aged about 30 years,  
Proprietor,  
Ganesh Auto Engineering Works,  
Near Sugar Factory Circle,  
M.C.Road,  
Mandya – 571 402.

6. Sri C.Narayana,  
S/o Chinnaswamy,  
Aged about 30 years,  
Proprietor,  
Baby Auto Works,  
Near Sugar Factory Circle,  
M.C.Road,  
Mandya – 571 402.

7. Sri Mariya Susain Stivan,  
S/o Anthony,  
Aged about 35 years,  
Proprietor,

St.Joseph Body Builders,  
Near Sugar Factory Circle,  
M.C.Road,  
Mandya – 571 402.

8. Sri M.P.Mansur Ahamad,  
S/o late M.P.Najeer Ahamad,  
Aged about 40 years,  
Proprietor,  
K.G.N Diesel Auto Works,  
Near Sugar Factory Circle,  
M.C.Road,  
Mandya – 571 402.

9. Sri N.Keshava  
S/o Narasimha Swamy,  
Aged about 60 years,  
Proprietor,  
Sri Nanjundeshwara Auto Works,  
Near Sugar Factory Circle,  
M.C.Road,  
Mandya – 571 402.

10. Sri S.Babu @ Basha  
S/o Mohammad Salar,  
Aged about 54 years,  
Proprietor,  
Salar Radiators,  
Near Sugar Factory Circle,  
M.C.Road,  
Mandya – 571 402.

... Appellants

(By Sri Mohammed Tahir, Advocate)

And :

1. The Assistant Executive Engineer (EI),  
Chamundeshwari Electricity Supply

Corporation Ltd., Mandya Division,  
Mandya

2. Sri H.K.Krishna,  
S/o late Kempaiah @ Kariyappa,  
Aged about 52 years,  
Hadya Village,  
Hullenahalli Post,  
Dudda Hobli, Mandya Taluk,  
Mandya District.

3. Sri Puttaveeregowda,  
S/o late Eregowda,  
Aged about 59 years,  
Door No.2773,  
Kusuma Nilaya,  
4<sup>th</sup> Cross, Gandhinagara,  
Mandya

4. Sri H.Shivakumar,  
S/o late Hombaiah,  
Aged about 48 years,  
Door N.2072,  
1<sup>st</sup> Cross, Subhashnagara,  
Mandya

5. Consumer Grievances Redressal Forum  
Chamundeshwari Electricity Supply  
Corporation Ltd.  
O/o Superintending Engineer,  
M.C.Road, Mandya,

... Respondents

(R-1 by Sri M.R.A.Prakash, Advocate,  
R-2 to R4 by Sri H.L.Shashi Kumar, Advocate)

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1. The appellants have filed this appeal to set aside the Official Memorandum dated 14.07.2014 and 27.10.2014 issued by Respondent No.1 in respect of their electrical installations and the Order dated 07.08.2015 of CGRF, Mandya in respect of their electrical installations.

2. Aggrieved by the Official Memorandums dated 08.04.2014 and 27.10.2014 issued by the Assistant Executive Engineer, CESC, Mandya, the appellants had filed writ petitions before the Hon'ble High Court of Karnataka in W.P.43753/2014 and 44231-242/2014. The said writ petitions came to be disposed off by the Hon'ble High Court of Karnataka in their order dated 09.10.2014 and 16.12.2014, and observed that the appellants if aggrieved have an alternative remedy before the Ombudsman under the provisions of Karnataka Electricity Regulatory Commission (CGRF & Ombudsman) Regulations, 2004. Accordingly, the appellants filed the complaint before the CGRF, Mandya, and the same came to be dismissed vide their order dated 07.08.2015 by CGRF, Mandya. Aggrieved by the said order of the CGRF, Mandya, the appellants have come before this Authority in appeal.

3. Comments were called vide letter dated 25.08.2015 from the 1<sup>st</sup> respondent, Assistant Executive Engineer, CESC, Mandya. He has submitted his comments vide letter dated 08.09.2015.

4. Both the appellants and the 1<sup>st</sup> respondent were informed by this Authority vide letter dated 07.09.2015 regarding availability of sub-section 20(1) of KERC (CGRF & Ombudsman) Regulations, 2004, which both the parties

have not availed. Hence, this Authority proceeds to pass orders on merits of the case. Accordingly, the case was taken up for hearing.

5. On 28.09.2015 one H.K.Krishna, Puttaveeregowda and H.Shiva Kumar have filed applications before this Authority requesting to implead them as respondents in the proceedings. The same was allowed on 08.10.2015 and considered them as Respondent No.2, Respondent No.3 and Respondent No.4.

6. The Counsel for respondent No.1 has filed the written arguments. The Counsel for the respondents 2 to 4 (impleading applicants) has filed the statement of objections along with the documents in support of their case.

7. The case of the appellants can be summarized as under :

(a) The appellants are the consumers of electricity at Mandya. The name, title and style of the business is as stated in the cause title.

(b) The Respondents 2 to 4, i.e. H.K.Krishna, Sri Shivakumar and Sri Puttaveeregowda (impleading applicants) had approached the Respondent No.1 and requested to transfer the electricity khata in respect of installations in survey number 819/1 of Sugar Factory Circle, Mandya, and also to disconnect the electricity. It is alleged that based on the requests made by the Respondents 2, 3 and 4, the Respondent No.1 i.e. AEE, transferred the electricity installations in the name of Sri H.K.Krishna s/o Kempaiah, Sri Shivakumar and Sri Puttaveeregowda without hearing the consumers i.e. the appellants though they are the

consumers and there is an agreement interse between the Company and the Consumers. Upon transfer of the said installations in their favour, they made a request also to dislodge the electricity supply and also requested to refund the deposits in terms of their letter dated 04.02.2014.

(c) The appellants say that when a similar request was made by the said Sri H.K.Krishna s/o Kempaiah @ Kariyappa earlier, it was declined by the respondent in terms of his letter dated 21.03.2014 saying that that there were disputes pending in the Hon'ble High Court of Karnataka in W.P.10303-304/2013.In view of the said litigation, the Respondent No.1 had also informed that the question of transfer of the installation is not permissible as per Section 52 of the Transfer of Property Act till disposal of the writ petitions. A similar letter was addressed to SriShivakumar (Respondent No.4) also.

(d) When the matter stood thus, vide Official Memorandums dated 14.07.2014 the Assistant Executive Engineer, CESC, i.e. Respondent No.1 directed the Appellants for the permanent surrender of power supply in respect of the installation number indicated therein referring to Regulation Nos.30.05, 30.08 and 30.09 of KERC S & D Code. It is said that the AEE has wrongly passed the said orders of disconnection and surrender order dated 14.07.2014 by relying on the orders in O.S. 836/2014, O.S. 837/2014 and O.S. 854/2014 passed by the Hon'ble Civil Courts, Mandya, along with the representations made by the respondents 2, 3 and 4.

- (e) Appellants say that, there is no decree or any order showing that the respondents 2, 3 and 4 as owners of the suit schedule property. The appellants herein and others filed writ petitions before the Hon'ble High Court in W.P.43753 and 44231 to 44242 /2014 challenging the disconnection of the electricity vide O.M. dated 14.07.2014 and further notice dated 21.07.2014 as well as 10.04.2014. The said writ petitions came to be allowed by the Hon'ble High Court in terms of their order dated 09.10.2014. While disposing of the said writ petitions, the Hon'ble High Court specifically directed to make a grievance by filing objections before the competent authority and directed to dispose them in accordance with law.
- (f) In pursuance of the directions issued by the Hon'ble High Court of Karnataka as stated above, the appellants filed detailed objections before the AEE Respondent No.1 i.e. the competent Authority on 27.10.2014.
- (g) The appellants say that the respondent No.1 erroneously relied on the orders passed in O.S. 836/2014, O.S. 837/2014 and O.S. 854/2014 by the Civil Court, Mandya. Further, in the decree in O.S.414/1993 the plaintiffs one Siddegowda, Honnappa.H, Malleshaiah and Chandrashekharaiyah, are declared as the owners and not the respondents 2,3 and 4 and that Krishna, Puttaveeregowda and Shivakumar. They have no right to seek transfer of installation in their favour claiming to be owners of the land. It is alleged that the



Respondent No.1 passed the erroneous OM dated 27.10.2014 without considering the plea of the appellants and the corroborating documents submitted by them. The Respondent No.1 failed to examine the papers and erred in passing the order on the same day.

- (h) Aggrieved, by the said OM dated 27.10.2014, again the appellants approached the Hon'ble High Court in W.P.54630-34 & 55829-30/2014 challenging the validity and correctness of the Official Memorandums dated 14.07.2014 (Annexures 64 to 73) and the impugned order passed by the respondent AEE on 27.10.2014 which disconnected the electricity in respect of the commercial shops owned by the appellants near Sugar Factory Circle, Mandya. The Hon'ble High Court disposed off the said writ petitions vide their order dated 16.12.2014, and observed that if the appellants are aggrieved by the order of the AEE, they have an alternative remedy to go before the Ombudsman under Karnataka Electricity Regulatory Commission (CGRF & Ombudsman) Regulations for necessary reliefs.
- (i) As a pre-requisite and as advised by the Ombudsman, the appellants have approached the CGRF, Mandya. The CGRF after considering the complaint filed by the appellants has passed the order dated 07.08.2015. The appellants say that again the CGRF failed to appreciate their claim and passed the order dismissing their appeal.
- (j) According to the appellants, the area in which the complainants are in possession and running the business is known as Girija Slum, and the same was notified as a slum by the Karnataka Slum Clearance Board.

Later a part of the area was excluded and that exclusion is under challenge in W.P.10303-304/2013 before the Hon'ble High Court and the same is pending for orders.

(k) According to the appellants the contention of the Licensee to say that they are not owners of the property is not correct. Under the Regulations the words 'premises' and 'consumer' are defined. According to Clause 2.18 'consumer' means the person in whose favour the electricity is supplied. Therefore, there is no law that the consumer should be the owner of the property or otherwise.

(l) The appellants say that the word 'person', 'Installation' and 'Occupier' are defined in the Regulations. In view of the aforesaid definitions, electricity supply could be extended to a person who is in occupation of the premises irrespective of the fact in what status or in what capacity such person is in occupation of the premises and it is not concern of the Electricity Company.

(m) As per the directions of the Hon'ble High Court of Karnataka dated 09.10.2014 in the writ petition 43753/2014 c/w other cases, the appellants have submitted their objections on 27.10.2014 to the AEE, and he has passed the order on the very same day without application of mind and examination of documents.

8. The Advocate for the 1<sup>st</sup> respondent AEE has filed the written arguments. The Counsel has stated that the appellants had failed to produce any proper legible documents of ownership, proof of occupancy, general trade

licence issued by local Authority, etc, and hence prayed the Authority to dismiss the appeal. Further, they are making a case by filing fake documents.

The Advocate for Respondents 2, 3 and 4 has filed the statement of objections and necessary documents. In the statement of objections, the Respondents 2, 3 and 4, have contended that –

- (a) The Hon'ble High Court of Karnataka in their orders dated 09.10.2014 in 43753/2014 c/w other writ petitions in the writ petitions has not given liberty to all the appellants and it clearly dismissed the averment of the appellants 1, 8 in page 10 and para 11. Hence appellants 1, 8, 9 have no locus standi to appear before the Ombudsman.
- (b) The Respondents 2, 3 and 4 say that the contentions relating to para 2 to 4 in the appeal memo with respect to Annexures 1 to 44, 43 to 55 are all based on illegal and fake documents. The order of the Civil Court dated 06.02.2015 dismissing the application filed by M.D.Babjan and others in O.S.854 of 2014 has been suppressed by the appellants and holding that the documents produced by M.D.Babjan and others does not disclose the khata number, location of shops, etc.
- (c) The contentions of the appellants in para 5 and 6 to say that that the area of the premises in question belongs to Slum Board is false. In W.P.10303-304 of 2013 except appellant No.1, other appellants are not parties at all. The averments made in para 6 of the appellant refers to third party.

- (d) According to Respondents 2,3 and 4, the averments made in para 7 to 10 in appeal memo are vague, misleading. Further the order by the District Consumer Redressal Forum, Mandya, in CC No.62/2011 obtained by the appellant, was challenged in W.P.48195/2011 before the Hon'ble High Court of Karnataka. The Hon'ble High Court of Karnataka by their order dated 18.07.2013 has quashed the order of the District Consumer Redressal Forum. The appellant No.9 also approached District Consumer Forum, Mandya, in CC No.51/2011 and obtained an order. It was also set aside by the Hon'ble High Court in W.P.14063/2013 dated 05.08.2013.
- (e) The Respondents 2, 3 and 4 (impleading applicants) say that they have established their case before the AEE and got the electrical Khata in their name.
- (f) It is stated that Annexures 1 to 41 and 43 to 55 filed by the appellants are not related to suit schedule properties. Appellants claim as owners and industrialists without any proof, valid documents and failed to produce any authenticated approvals obtained from the competent Authority.
- (g) It is said that the documents produced by the appellants are all false.
- (h) The respondents 2 to 4 have acquired title as is evident from the copies of the sale deeds, mutation register extracts, etc.

(i) The Respondents 2 to 4 (impleading applicants) in toto denied the averments made by the appellants in the appeal and further say that the documents produced by the appellants are all fake. The documents produced by the appellants such as trade licence, Khata, are all fake as they do not disclose the location of the business, the property number, etc. Even the electricity bills produced by the appellants do not disclose any substantial evidence in support of their claim.

9. Heard the Counsels for the appellants and respondents. At the time of hearing, they have reiterated the contentions raised in the appeal memo, objections and the written arguments filed by the Respondent No.1.

10. The Advocate for the appellants in his oral arguments has further argued as follows :

(a) To stop electricity or transfer the installation by the CESC is against to the Agreement between the consumers and the Licensee (CESC).

(b) The respondents 2 to 4 has mislead the AEE regarding the ownership.

(c) The Licensee has no authority to decide the ownership of the property which has got electricity connection.

(d) The AEE who has conducted the enquiry on 27.10.2014 has not applied his mind and has not studied the documents

11. Considered both written and oral arguments, objections and the documents. Based on the facts and circumstances stated therein the following issues arise for consideration.

(i) Whether the appellants have produced valid documents pertaining to occupancy or ownership as per Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka?

(ii) Whether the order passed by the CGRF confirming the order of the Assistant Executive Engineer is sustainable in law?

12. To answer the above it is more pertinent and relevant to ensure whether the Respondent 1 and the CGRF have passed the order as per the norms specified in Conditions of Supply of Distribution Licensees in the State of Karnataka .

13. Clause 4.02, 4.09, 36, 36.03 and 43 of the Conditions of Supply Distribution Licensees in the State of Karnataka specifies and stipulates the procedure of power supply and the documents to be considered while giving the installation. The 1<sup>st</sup> respondent while examining the documents presented by both the appellants and the respondents has examined the stipulations and norms and has passed the OMs dated 14.07.2014 and 27.10.2014.

14. The Official Memorandums dated 14.07.2014 and 27.10.2014 issued by the Respondent No.1 Assistant Executive Engineer are perused. He has considered the copies of the sale deeds, khata extracts and Form No.3 issued by the City Municipal Council, Mandya, pertaining to the Khata D8/220/11181/S-1 measuring 80' x 120' owned by the Respondent No.2 Sri H.K.Krishna. Copies of the order passed by the Civil Judge & JMFC, Mandya, in O.S.854/2014, O.S. 836/2014 and O.S. 837/2014 submitted by Respondents

No.2, 3 and 4, reveal the fact that they are the owners of the suit schedule property. The Hon'ble Civil Court, Mandya, has also restrained one of the appellants from interfering with the peaceful and lawful possession and enjoyment of the suit schedule properties in possession of Respondent No.2 in O.S.837/2014.

15. The CGRF, Mandya, in their order have dealt the subject in detail and have observed that the appellants have failed to submit the necessary documents in support of their claim like proof of ownership and licence issued by the appropriate local Authority and other relevant documents. Further, they held that the Respondents 2, 3 and 4 have submitted the relevant documents like sale deed, municipal khata, and also the orders of the Civil Court, Mandya in O.S. 854/2014, O.S. 836/2014, and O.S. 837/2014, in support of their claim, which has been considered by the Respondent No.1 to decide the case.

16. It is to be noted here that in W.P.54630-54634 of 2014 filed by Iqbal Ahamed, Amjad Shariff, Sirajuddin, C.Narayana, MariyaSusainStivan, and W.P.55829-55830 of 2014 filed by Siddappaji and S.Babu, the Hon'ble High Court has observed that *"... I find that the Assistant Executive Engineer has applied his mind to the documents produced by both the parties and has passed a reasoned order holding that there was no material to accept the assertions made by petitioners"*.

17. Even before this Authority, the appellants have failed to place the correct documents in support of their case. The Official Memorandums dated

14.07.2014 and 22.10.2014 issued by the Respondent No.1 are in order. Therefore, there is no valid reason to interfere with the orders CGRF, Mandya, dated 07.08.2015. Hence the following order.

**ORDER**

The appeal filed by the appellants is dismissed.

**Sd/-  
(B.N.Krishnaiah)  
Electricity Ombudsman**

To :

1. Sri Mohammed Tahir, Advocate, Access Law, No.8, 2<sup>nd</sup> Floor, Opp: MLA Layout, Rahamath Nagar, R.T.Nagar Main Road, Bangalore – 560 032.
2. Sri M.R.A.Prakash, Advocate, 1<sup>st</sup> Floor, V.G.P. Buildings, P.E.S. Engg. College Road, Mandya.
3. Sri H.L.Shashi Kumar, Advocate, No.1, 6<sup>th</sup> Cross, Pulakeshi Old Post Office Road, Ram Murthy Nagar, 6<sup>th</sup> Cross, Bangalore – 560 016
4. The Assistant Executive Engineer (EI), Chamundeshwari Electricity Supply Corporation, O & M Sub-division, M.C.Road, Mandya.
5. The Chairman & Superintending Engineer, C.G.R.F, Chamundeshwari Electricity Supply Corporation, B.M. Road, Mandya
6. Managing Directors of ESCOMs.
7. PS to Hon. Chairman, KERC
8. PS to Hon. Member (A), KERC
9. PS to Hon. Member (M), KERC
10. PS to Secretary, KERC

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