

D-800

BEFORE THE ELECTRICITY OMBUDSMAN

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

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

Case No.OMB/C/G-263/2016

Dated : 22.11.2016

M.R.Visveshwaraiah, AEE (Ele), KEB (Retd)
No.529, 9th Cross, 1st Main, 7th Block,
Jayanagar West, Bengaluru – 560 070

V/S

(By Sri K.R.laxmikantha, Authorised Representative)

1. The Assistant Executive Engineer, (EI),
O & M, v.V.Mohalla sub-division,
Chamundeshwari Electricity Supply Corporation,
v.V.Mohalla,
Mysuru

(Party in person)

2. Dr.Haraswarupa Gurkar,
S/o Puttaraju,
Aged about 47 years,
R/a 2706/1, Temple Road,
V.V.Mohalla,
Mysuru

3. Dr. Paranjyothi,
w/o Dr.Haraswarupa Gurkar,
Aged about 45 years,
R/a 2706/1, Temple Road,
V.V.Mohalla,
Mysuru

4. The Chairperson
CGRF & Superintending Engineer,
Chamundeshwari Electricity Supply Corporation
Jodi Basaveshwara Road,
Kuvempu Nagar,
Mysuru

... Respondents

(R-2 and R-3 by Sri Prakash M Patil, Advocate)

1. This is an appeal under clause 21.02 of KERC (CGRF & Ombudsman) Regulations, 2004 against the orders passed by CGRF, CESC, Mysuru dated 20.05.2016.

2. Comments were called vide letter dated 20.06.2016 from the respondent AEE and he has submitted the reply vide letter dated 02.07.2016.

3. Both the appellants and the 1st respondent were informed vide letter dated 05.02.2016 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.

4. Case was taken up for enquiry on 04.08.2016. One Dr Haraswarupa Gurkar and his wife Dr.Paranjyothi appeared, and filed an application

requesting to implead themselves saying that are the interested parties in the case. After hearing them their request was considered and allowed.

5. The contentions of the appellant is as follows :

(a) The CESC has arranged 40 KW power supply in the name of P.H.Gurkar at No.2706/1, D-23, 23A, Temple Road, V.V.Mohalla, Mysore, without demanding and obtaining NOC from other three co-owners of the joint property. The power supply is given on the basis of a fraudulent trade license where the year of license has been changed from 2004-2005 to 2005-06 thereby violating ES & D Code 9 and 43 of KERC Regulations. The appellant has requested to set aside the order of the CGRF and to disconnect the electricity given to the installations in question.

6. The AEE has submitted his reply on 02.07.2016 as under :

(a) The installation bearing MSVVCL 3499 and MSVVCL 3500 are in the property bearing No.2706/1, Temple Road, V.V.Mohalla, Mysuru. This property is jointly owned by (1) Sri M.R.Visveshwaraiah (appellant), (2) Dr.M.V.Paranjyothi d/o M.R.Visveswaraiah, (3) Dr.Haraswarup Gurukar (son-in-law of M.R.Visveswaraiah, (4) Smt.Tejaswini d/o M.R.visveswaraiah. The registered owner of these two installation is Dr.Hraswarup Gurkar;

(b) Previously in the year 2005 Sri M.R.Visveshwaraiah – one of the co-owners, had obtained No Objection from the other three co-owners, had obtained HT power supply connection. However, the consumer did not comply with the relevant rules prevalent then, hence

connection was cancelled. Subsequently, Dr.Haraswarup Gurkur , son-in-law of the appellant and joint owner of the property applied for 40 KW power under LT category and the same was sanctioned. Connection was given to the said two installation MSVVCL 3499 and MSVCL 3500 on 13.01.2006.

(c) The appellant M.R.Visveshwaraiah, one of the co-owners of the property objected for this saying that it is not correct to give power without obtaining NoC from the joint owners as per Clause 9.01 ES & D Code and requested to disconnect the power supply;

(d) Dr.Haraswarup Gurkur was advised to obtain NoC from the other joint owners. For this he replied and brought to the notice of the Licensee that there a case pending before the City Civil Court, Mysore, in O.S.520/2006 and 712/2016 with regard to ownership of the property and requested not to disconnect the power. In this regard the Hon'ble City Civil Court, Mysore, in O.S.520 of 2006 has pass an order which is as follows :

ORDER

"It is hereby declared that the defendants have got no right to disconnect power supply and the defendants are restrained by way of permanent injunction from disconnecting the power supply pertaining to Rr No.MSVVCL3499 and MSVVCL3500 situated in the suit schedule property unless the conditions of power supply are violated".

In respect of O.S.712/2006 also the Hon'ble City Civil Court, Mysore, have passed an order which is as follows :

ORDER

“The suit filed by the plaintiff is hereby decreed. No cost.

The defendants are hereby restrained from interfering with the plaintiffs peaceful possession and enjoyment of the suit schedule property and from dispossessing the plaintiff from the suit schedule property by way of permanent injunction without under the process of law.”

In the light of these orders the power was not disconnected.

(e) Aggrieved by this, the appellant has approached the District Consumer Forum. The Forum ordered to disconnect the power if the consumer fails to submit the required documents. However, the consumer Dr.Haraswarup Gurkur approached the Hon’ble City Civil Court and filed a contempt petition and prayed for continuation of power in the light of the order passed by the Court. The contempt proceedings were dropped as the power was not disconnected;

(f) The respondent AEE submits that the Hon’ble High Court in RSA 1723/2011 stayed the order of City Civil Court of Mysore, which had dismissed the regular appeal filed by Sri Gurkur;

(g) In the light of these litigations between Dr.Haraswarupa Gurkar and Sri M.R.Visveshwaraiah legal opinion was sought from the legal officer of CESC. He has advised not to disconnect the power in the light of the order of the Hon’ble High Court;

7. Further the AEE has submitted as follows :

The Licensee shall not disconnect supply to a consumer except in the following circumstances:

- i) At the request of the consumer;*
- ii) Mandates the Licensee to do so by a person with legal authority to issue such mandate;*
- iii) When the Licensee is entitled to do so under an agreement with the consumer;*
- iv) The Licensee reasonably believes that the consumer has contravened the provisions of the Code which entitled the Licensee to disconnect the supply.*

Section 2.18. Definition of Consumer :

“Consumer” means any person who is supplied with electricity for his own use by a Licensee or the Government or by any other person engaged in the business of supplying electricity to the public under the Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a Licensee, the Government or such other person, as the case may be”.

Hence it is submitted that as per Regulation 7.1 of Conditions of Supply it is not possible for disconnecting the power which is given to a consumer.

8. The advocate for the impleading applicants i.e. respondents 2 and 3 has filed the statement of objections/written arguments as follows :

- (a) The respondent No.2 along with his wife purchased a property bearing No.2706/1, D-23, 23-A consisting of ground and first floor, situated at Temple Road, V.V.Mohalla, Devaraja Mohalla, Mysore, vide sale deed dated 29.08.2003 from one M.R.Vishwesharaiah and Smt.M.V.Tejaswani. There existed some dispute between the

respondent No.1 and the seller of the property. Therefore respondent No.2 filed a suit in O.S.520 of 2006 against CESC. Further, the respondent No.2 Dr.P.Haraswarup Gurkar and respondent No.3 Dr.Paran Jyothi, filed a suit in O.S.712 of 2006 against M.R.Vishwesharaiah for permanent injunction restraining the defendant from interfering with the peaceful possession of the property. This suit came to be decreed. Being aggrieved by the same, M.R.Vishwesharaiah has filed the appeal in RA 723 of 2010. The lower appellate Court by his Order was pleased to allow the appeal and dismissed the suit by his order dated 21.07.2011. Against the order dated 21.07.2011 in RA 723 of 2010, the Dr.P.Harawarup Gurkar and Dr.M.V.Paran Jyothi have filed the second appeal before the Hon'ble High Court of Karnataka in RSA 1723 of 2011;

(b) The property in question is a commercial property and the respondent No.2. Is running a Dental Clinic in the said property. The Municipal Corporation of Mysore failed to renew the Trade License. Hence he has filed a suit in O.S.867 of 2010 and the said suit came to be decreed directing the Municipal Corporation to renew the trade licence of the respondent No.2;

(c) The appellant has filed the suit in O.S.1444 of 2006 for partition and separate possession of the schedule property and the same is pending adjudication. The appellant is not a consumer and the appeal is not maintainable and moreover this Authority has no jurisdiction until disposal of the suit filed by the appellant for partition of the schedule property;

(d) The respondent No.2 is running a Dental Clinic by obtaining a trade licence. The trade licence was issued by the concerned authority after verification. Therefore appellant being intolerable is bent upon to harass the respondent No.2 by fling one or the other complaints/appeals, etc, on flimsy grounds and also misinterpreting and misleading the Authorities.

9. Further, the records are also seen and found that -

(a) The Mysore City Corporation vide its notice dated 20.11.2008 has informed that on 11.01.2005 “ಡಾ ಪಿ.ಹರಸ್ವರೂಪ ಗುರುಕಾರ್ ರವರಿಗೆ ನಂ.2706/1, ಟೆಂಪಲ್ ರಸ್ತೆ, ವಿ.ವಿ.ಮೊಹಲ್ಲ, ದೇವರಾಜ ಮೊಹಲ್ಲಾ, ಮೈಸೂರು ಈ ಸ್ಥಳಕ್ಕೆ ದಂತ ಚಿಕಿತ್ಸಾಲಯ ನಡೆಸಲು ದಿನಾಂಕ 11.01.2005 ರಂದು ಮೈಸೂರು ನಗರ ಪಾಲಿಕೆಯಿಂದ ರಹದಾರಿ ನೀಡಲಾಗಿದೆ”. In the said letter it is informed that Dr.Haraswarup Gurkar has paid the licensee fee (ರಹದಾರಿ ಶುಲ್ಕ) for the years 2005-06, 2006-07, 2007-08, 2008-09;

(b) The Inspector General of Police, Vigilance & Enforcement, attached to KPTCL and all Electricity Supply Companies by its letter dated 20.02.2009 addressed to the Principal Secretary to Government, Energy Department, Bengaluru, has stated as follows :

“The Enquiry Officer has concluded that the allegations made by the petitioner against the CESC Engineers that the Trade License furnished by Dr.Haraswarup Gurukar to the CESC is a forged one and that the Technical Supervisor did not sign the Test Report while giving service to the installation are not true. It was also revealed that during the enquiry that the Engineers of CESC, Mysore had sanctioned and given service of 40 KW power to the commercial complex, in site No.2706/1, Temple Road, V.V.Mohalla, Mysore city in accordance with the rules and regulations laid down in KERC Electricity Supply and Distribution Code. This also pertinent to mention here that petitioner Sri

Vishwesharaiah is having disputes with his elder daughter Dr.Pranjyothi and son-in-law Dr.Haraswarup Gurukar on financial matters and that is the reason for filing this petition”.

(c) Suit in O.S.1444 of 2006 for partition and separate possession is pending adjudication.

10. The submissions made by the Appellant, the Respondent and the impleading Applicants i.e. Respondents 2 and 3 and the records are perused in detail. In the light of the stipulations enshrined in Section 43 of the Indian Electricity Act, Clause 2.18 and 4.02 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, it is found that the proceedings initiated by the AEE and order of CGRF are in order. There are no sufficient and valid reasons to interfere with the order of CGRF. Hence, the appeal is dismissed.

Sd/-

(B.N. Krishnaiah)
Electricity Ombudsman

To :

1. Sri Er. K.R.Laxmikanta, No.1411, Ravinandana, poorna Dristi Road, 2nd Cross, C & D Block, Kuvempu Nagar, Mysuru – 570 023
2. Sri Prakash M Patil No.101, 6th Cross, Railway Parallel Road, Kumara Park West, Bengaluru – 560 020
3. The Assistant Executive Engineer(EI), O&M, Chamundeshwari Electricity Supply Corporation, V.V.Mohalla Sub-Division, Mysuru
4. The Chairperson CGRF & Superintending Engineer, Chamundeshwari Electricity Supply Corporation, Jodi Basaveshwara Road, Kuvempu Nagar, Mysuru
5. Managing Directors of ESCOMs.

6. PS to Hon. Chairman, KERC
7. PS to Hon. Member (A), KERC
8. PS to Hon. Member (M), KERC
9. PS to Secretary, KERC
