

D-753

BEFORE THE ELECTRICITY OMBUDSMAN

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

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

Case No.OMB/H/G-242/2016

Dated 18.08.2016

Sri S.V.Hulamani,
C/o Tushar M.Baddi
Near SBI, Keshwapur,
Hubballi

... Appellant

(By Sri Tushar M.Baddi, Authorised Representative)

1. The Assistant Executive Engineer (EI)
O & M sub-division-3, HESCOM
Industrial Estate, Gokul Road,
Hubballi.

2. The Chairperson, CGRF,
Dharwar District, HESCOM,
Office of the Superintending Engineer,
O&M Circle, HESCOM, Tabibland,
Hubballi

... Respondents

(R-1 by Sri H.V.Devaraj, Advocate).

1. This is an appeal under clause 21.02 of KERC (CGRF & Ombudsman) Regulations, 2004 against the orders passed by CGRF, Hubballi, (hereinafter referred to as the 2nd Respondent) dated 21.10.2015.

2. Both the appellants and the 1st respondent were informed vide letter dated 05.07.2016 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.

3. Comments were called vide letter dated 07.01.2016 from the respondent AEE and he has submitted the reply.

4. This appeal is filed against the Order of the CGRF dated 21.10.2015, who have turned down the plea of the appellant and have observed that the case does not come under the purview of CGRF since the issue relates to theft of power, attracting proceedings under Section 126 of the Electricity Act.

5. The premises of the appellant was having five installation for domestic purpose of which the following installations were converted to commercial purpose as detailed below :

Sl. No.	Installation No.	Power sanction under tariff	Date of sanction	Category of tariff changed to	Date of change of tariff
1	12624-A	LT-2	12.02.1987	LT-3	02.11.2009
2	12623-A	LT-2	12.02.1987	LT-3	02.11.2009
3	12622-A	LT-2	12.02.1987	LT-3	02.11.2009
4	12624-A	LT-2	12.02.1987	LT-3	02.11.2009

Whereas the other installation No.63179/A continued to be under domestic use. Now the issue before this Authority is in respect of the said installation No.63179A regarding the question of usage of power.

6. The appellant has sought the following reliefs :

- (i) to issue interim order against disconnection of the said installation No.63179/A with respect to disputed arrears till the final disposal of the suit.

(ii) to set aside the impugned order of CGRF, HESCOM, Hubli.

7. Further, the contention of the appellant is as follows :

(a) The concerned AEE has issued a back bill on 30.06.2015 for Rs. 40,241-00 in respect of installation No. 63179A after a lapse of 3 years based on the report of vigilance squad who had inspected the installation on 01.10.2012 ;

(b) The appellant says that the water from the borewell connected with the said installation was used for a PG which falls under domestic category ;

(c) The water utilised for Ganesh Darshini Hotel is from the piped connection obtained from the local Municipality and not from the said installation as alleged by the Respondent ;

(d) Moreover, the Respondent has not dealt the proceedings as required under Regulation 29.05 of Conditions of Supply of Distribution Licensees in the State of Karnataka. It is a one sided action taken by the Respondent.

8. The learned Advocate for the Respondent Sri H.V.Devaraj has filed the vakalath along with a copy of the reply submitted by the AEE. The contention of the respondent is as follows :

(a) On 01.10.2012 when the vigilance squad inspected the installation in question it was seen that the water from the borewell was misused for commercial purpose i.e. for a hotel and PG which is in violation of the norms ;

(b) The Appellant was served with the notice for payment of back bill of Rs.40,241-00 through RPAD in July 2013 and also was given an opportunity to file his objections if any as per Rules;

(c) Instead of filing his objection the Appellant has come before this Authority;

(d) Since it is a misuse of power directed the Appellant to pay an arrears of Rs.1,05,003-00 as from 01.10.2012 (date of installation by the vigilance squad) to 25.10.2015 on which the installation was converted from LT-2 to LT-3 ;

9. The case was taken up for enquiry on 21.07.2016 and further dates. At the time of hearing Sri Tushar Baddi, authorised representative for the Appellant, reiterated his contentions made in the written memo along with the appeal and submitted that there was no misuse of power. Further, he argued that the Respondent Authorities had not followed the procedure.

10. The learned Advocate for the Respondent reiterated the contentions made in the reply.

11. Considered the written and oral submissions made by both the parties. The inspection report of the vigilance team and further the action of the Appellant to convert the installation to commercial purpose in the year 2015 and the connected records establishes the fact that there was misuse of power during the duration cited above. Hence, it requires to be dealt under Section 126 of the Electricity Act, 2003. The question which arises for consideration is as to whether the Respondent authorities have followed the set procedure, which, they have not. Hence the following Order.

ORDER

The appeal is partly allowed and the case is remanded to the concerned AEE to take up the matter afresh and consider the same under Section 126 of the Electricity Act and pass suitable order as per law at the earliest.

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

To

1. Sri Tushar M.Baddi, Near SBI, Keshwapur, Hubballi
2. Sri H.V.Devaraju, Advocate, No.39, Shop No.24, Mazzanine Floor, A.S.V.N.V.Bhavan, K.G.Road, Bengaluru – 560 009.
3. The Assistant Executive Engineer (EI), O & M sub-division-3, HESCOM Industrial Estate, Gokul Road, Hubballi.
4. The Chairperson, CGRF, Dharwar District, HESCOM, Office of the Superintending Engineer, O&M Circle, HESCOM, Tabibland, Hubballi.
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
