

**BEFORE THE ELECTRICITY OMBUDSMAN**

No.16 C-1, Miller Tank Bed Area (Behind Jain Hospital)  
Vasanthanagar, Bengaluru-560052.

Present: S.S Pattanashetti,  
Electricity Ombudsman,

**Case No. OMB/H/G-375/2019**

**Dated 06/01/2020**

In the matter of

Sri Ashok D Adhyapak,  
Plot No. 629,  
Kumaraswami Layout East,  
1<sup>st</sup> Main, 6<sup>th</sup> Cross,  
Bauxite Road,  
Belagavi – 590010.  
Gadag District.

Represented by:

1) Sri Abhishek A Kalkundri,  
CCB No. 73, “Kusum Niwas”,  
Opp. Mahatesh Garden,  
Mrutunjaya Nagar, Tilakwadi,  
Belagavi – 590006.

2) Sri B.S. Kolki,  
(Rtd. Superintending Engineer, HESCOM),  
Belgaum Electricals, “Amrut” Complex,  
Pipeline Bus stop, Vijaya Nagar,  
Belagavi – 590008. -

Appellant

Vs

1) The Assistant Executive Engineer (Electrical),  
O & M (Ele) City Sub-Division-1, HESCOM,  
Belagavi District.

2) Chairperson, Consumer Grievance Redressal Forum/(CGRF)  
Belagavi District,  
Superintending Engineer (Ele),  
O & M Circle, HESCOM,  
Neharu Nagar,  
Belagavi – 590010. - Respondents

- 1) This Appeal/Complaint is filed before this Authority, by Sri Ashok D Adhyapak, (Appellant/Complainant), under the provisions of Clause 21.2 of the KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2004, in Form 'B' challenging the order No. ಬೆ/ಗ್ರಾವೆ/ಅಇಂ(ವಿ)/ಉಲೆನಿ/ಹಿಸ-2/2019-20/5383-87, dated 27-09-2019 of CGRF, Belagavi District, by inter-alia seeking the following reliefs: To direct the Respondents to pay the complainant the Tariff charges as agreed upon in the Power Purchase Agreement i.e. @ Rs. 7.08/unit along with interests for the entire period of Breach of the Agreement.
- 2) Brief facts, which are relevant to the case on hand, as claimed by the Appellant/Complainant are as follows:

The Appellant/Complainant approached the Respondent-1/AEE for putting up roof top solar power plant project on his building on 10-10-2013. Then he entered into bilateral agreement with the Respondent-1/AEE i.e., PPA for installation of SRTPV and exporting energy to the grid with insulations bearing RR No. ACL 14127-10 KWs on 20-04-2017 and RR No. AEH 14129-6 KWs on 16-08-2017 at the rate of Rs. 7.08/- per unit. The Appellant/Complainant completed his work within the stipulated time and requested the Respondent-1/AEE on 23-08-2017 to synchronize the same. The Respondent-1/AEE has not followed the guidelines. He has not synchronized the installation

within 7 days. The rate for the energy exported to the grid by his roof top solar power projects was agreed at Rs. 7.08/- per unit. The Respondent-1/AEE unilaterally decided to apply tariff of Rs. 4/- per unit citing KERC orders which were not applicable to his installations. The Respondent-1/AEE did not consider his application and decide regarding application of agreed tariff of Rs. 7.08/- per unit to the said installations. Aggrieved by the in action of the Respondent-1/AEE, the Appellant/Complainant filed a complaint before CGRF Belagavi District on 08-05-2019.

The CGRF Belagavi District passed the following order on 23-09-2019: -

“ಸ್ಥಾವರ ಸಂಖ್ಯೆ: ACL14127 & AAEH14129 ಗಳ ಸೌರ ವಿದ್ಯುತ್ ಉತ್ಪಾದನಾ ಘಟಕಗಳಿಗೆ, ಘಟಕದ ಆರಂಭದ ಹಾಗೂ ಸಿಂಕ್ರೋನೈಸೇಷನ್ ದಿನಾಂಕದಿಂದ ಕರ್ನಾಟಕ ವಿದ್ಯುತ್ ನಿಯಂತ್ರಣಾ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು ಇವರ ಆದೇಶ ಸಂಖ್ಯೆ:ಎಸ್/03/1 ದಿನಾಂಕ:15.09.2017 ರ ಆದೇಶದ ದಿನಾಂಕದ ವರೆಗೆ, ಅಂದರೆ ದಿನಾಂಕ: 14.09.2017 ರ ವರೆಗೆ ಪ್ರತಿ ಯುನಿಟಿಗೆ ರೂ: 7.08/- (ಏಳೂ ರೂಪಾಯಿ ಏಂಟು ಪೈಸೆ) ರ ದರದಲ್ಲಿ ಪಾವತಿಸುವುದು. ತದನಂತರದಲ್ಲಿ, ಕರ್ನಾಟಕ ವಿದ್ಯುತ್ ನಿಯಂತ್ರಣಾ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು, ಇವರ ಆದೇಶ ಸಂಖ್ಯೆ:ಎಸ್/03/1 ದಿನಾಂಕ: 15.09.2017 ರ ಆದೇಶದಂತೆ, ಆದೇಶದ ದಿನಾಂಕದಿಂದ, ಅಂದರೆ ದಿನಾಂಕ:15.09.2017 ರಿಂದ The latest finalised APPC rates notified by the Commission or Rs. 4/- per unit whichever is less ದರದನ್ವಯ ಪಾವತಿಸಲು ಈ ಮೂಲಕ ಆದೇಶಿಸಲಾಗಿದೆ.”

Aggrieved by the order of the CGRF the Appellant/Complainant has filed the present appeal/complaint before this authority on 13-11-2019.

- 3) Both the parties were informed vide this office letter No. OMB/H/G-375/2019/D-1377 dated 13-11-2019, regarding availability of provision of Sub-Regulation 1 of Regulation 20 of KERC (CGRF & Ombudsman) Regulations, 2004 for settlement through conciliation and mediation and to appear before this Authority on 28-11-2019.

However, they have not availed the benefit of the said provision. The case was listed for hearing on 28-11-2019 and 20-12-2019.

- 4) The Electricity Act 2003 defines Consumer as follows: -

**2. Definitions:**

(15) ““**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 this 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;”

- 5) The KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2004, defines Consumer as follows: -

**2. Definitions:**

(h) ““Consumer’ means any person who is supplied with electricity for his own use by a licensee under this 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.”

- 6) In the present appeal/complaint the Appellant/Complainant is not a person who is supplied with electricity by a licensee. On the other hand, he is a generator of electricity. In view of the above the present appeal of Appellant/Complainant does not come under the purview of the KERC (CGRF and Ombudsman) Regulations 2004. It was wrong on the part of the CGRF also to have entertained the complaint and passed order on it.
- 7) On perusal of the Power Purchase Agreement (PPA) entered into between the Appellant/Complainant and the Respondent-1/AEE, at

para 10 of the agreement the provision of Dispute Resolution is mentioned as follows: -

**“10 Dispute Resolution:**

All the disputes between the parties arising out of or in connection with this agreement shall be first tried to be settled through mutual negotiation.

The parties shall resolve the dispute in good faith and in equitable manner.

In case of failure to resolve the dispute either of the parties may approach the appropriate forum of law.”

In the above para it is mentioned that in case of failure to resolve the dispute either of the parties may approach the appropriate forum of law.

In Section 86 of the Electricity Act 2003, the functions of the State Electricity Regulatory Commission have been mentioned. Section 86(f) is reproduced here below: -

**86. Functions of State Commission: -** (1) The State Commission shall discharge the following functions, namely: -

(f) “adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration;”

8) The Electricity Act 2003 defines generating company as follows: -

**2. Definitions:**

(28) ““**Generating company**” means any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person, which owns or operates or maintains a generating station;”

9) Going by the above paras it is clear that the Appellant/Complainant is not a consumer but a generator of electricity. As he is not a consumer of electricity, the KERC (CGRF and Ombudsman) Regulations 2004, does not apply to him in this particular case. The

Appellant/Complainant has to approach the appropriate forum of law for redressal of his grievance regarding the tariff rate fixed by the Respondent-1/AEE to the electricity generated by his solar roof top power projects.

10) In view of the foregoing paras the following order: -

**No. OMB/H/G-375/2019/D-1415**

**Dated 06-01-2020**

**O R D E R**

- 1) The Appeal/Complaint filed by the Appellant/Complainant is dismissed.
- 2) The order of CGRF Belagavi District bearing No. ಬೆ/ಗ್ರಾವೆ/ಅಇಂ (ವಿ)/ಉಲೆನಿ/ಹಿಸ-2/2019-20/5383-87, dated 27-09-2019 is set aside in view of the lack of jurisdiction of Consumer Grievance Redressal Forum.

Sd/-

(S.S Pattanashetti)  
Electricity Ombudsman.

- 1) Sri Ashok D Adhyapak,  
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Superintending Engineer (Ele),  
O & M Circle, HESCOM,  
Neharu Nagar,  
Belagavi – 590010.
- 6) PS to Hon’ble Chairman, KERC
- 7) PS to Hon’ble Member (M), KERC
- 8) PS to Hon’ble Member (R), KERC
- 9) PA to Secretary, KERC.
- 10) Chairperson of all CGRF’s in the State.