

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/B/G-350/2019

Dated 19/11/2019

In the matter of

Sri K.A. Harinath
M/s. Futura Digital Press,
14, 15, 4th Main, 2nd Cross,
Chamarajpet,
Bengaluru – 560018.

Represented by:
Shri M.A Delvi,
Advocate,
#8, 3rd Cross, Pottery Town,
Bengaluru - 560046

-

Vs

Appellant

1) The Assistant Executive Engineer (Electrical),
W-2 Sub Division, BESCOM,
Chamarajpet,
Bengaluru - 560018.

2) Chairman, Consumer Grievance Redressal Forum/(CGRF)
Bengaluru Urban District,
West Circle Office, BESCOM,
CA Site, No. 05, West of Chord Road,
3rd Stage, Bhima Jyothi, HSBC Layout,
Next to Chord Road Hospital,
Basaveshwarnagar,
Bengaluru – 560079.

-

Respondents

- 1) This Application/Complaint is filed before this Authority, by Sri K.A. Harinath, (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. CGRF 27/2018-19/27-08-2018/1511-13 dated 09-07-2019 of CGRF, Bengaluru Urban District, by inter-alia seeking the following reliefs:
 - a. Allow the appeal with costs.
 - b. Quash the order of the Consumer Grievance Redressal Forum as the same suffers with legal infirmities besides being perverse.
 - c. Quash the speaking order passed by the Assistant Executive Engineer, (Ele) and the Assessing officer dated 01-08-2018 as the same fails to address the issue involved and hence illegal and perverse.
 - d. Declare that the activity covered under a Digital printing press comes under LT-5 Tariff schedule.
 - e. Grant such other relief/reliefs as deemed justified under the circumstances of the case.
 - f. Grant costs.

- 2) Brief facts, which are relevant to the case on hand as claimed by the Appellant/Complainant, are as follows:

The Appellant/Complainant is having an industrial installation bearing RR No. W2P 2194 having a sanctioned load of 40 HP, which was serviced during 2007 for purposes of running and operating a 'Digital Press' under LT5 tariff. The unit has availed a certificate from Directorate of Industries and Commerce on 18-05-2007 by the District Industry Centre (DIC), Bengaluru District. On 15-02-2018 the Assistant Executive Engineer (Ele) Meter Testing Division inspected

the unit of the Appellant/Complainant and in his remarks has mentioned:

“Premises being used for commercial purposes, appropriate Tariff to be applied as per BESCO Rules and Regulations”

The officer had not drawn any mahajar or had filed any report furnishing therein any reason for such a conclusion. The Respondent-1/AEE by notice dated 02-06-2018 back billed the installation for a period of 15 months for Rs. 5,91,178/- and demanded payment of the same terming the demand as “Short Claim”, providing therein liberty to file objections within 15 days of the notice. The Appellant/Complainant in response to the demand notice filed his objections on 11-06-2018 questioning therein arbitrary conclusion with regard to:

- a. The tariff applicable to the activity pursued comes under Tariff Schedule LT-5.
- b. Since the Respondent himself at the first instance fixed the tariff applicable as LT-5 and hence there was no justification to back bill the installation.

The Respondent-1/AEE after hearing the Appellant/Complainant passed a speaking order dated 01-08-2018 confirming the back bill on the sole ground that the office to which he had referred the certificate dated May 2007 for verification had replied to him that the said information is not available with that office.

Aggrieved by the order of the Respondent-1/AEE a complaint was filed before the CGRF by the Appellant/Complainant on 24-08-2018. The CGRF by a majority of 2:1 dismissed the complaint pointing to the provision of Clause 42.02 of Conditions of Supply of Electricity (COS).

Challenging the order of CGRF the Appellant/Complainant has filed the present appeal/complaint. The Appellant/Complainant in the appeal memo has raised the following grounds for appeal:

- a. The issue does not fall under rubric of clause 42.02 of Conditions of Supply of Electricity (COS) for the reason that the tariff LT-5 was assigned by the Licensee himself at the first instance for “Digital Printing Press”. It being not a misuse but a legitimate use. The Respondent is barred from taking advantage of its mistake. The official members of the CGRF turned a blind eye to this glaring fact.
 - b. The Meter Test report dated 15-02-2018 has not termed the usage as “misuse” to invoke the provision of Clause 42.02 of Conditions of Supply of Electricity (COS). He has failed to conduct any mahajar or pronounced his reasons thereto. The report suffers with legal infirmity and hence cannot be a basis for an action as contemplated. The Appellant/Complainant has prayed for quashing of the order of CGRF and the speaking order passed by the Assistant Executive Engineer (Ele) and the Assessing officer dated 01-08-2018.
- 3) Both the parties were informed vide this office letter No. OMB/B/G-350/2019/D-1324 dated 23-07-2019, regarding availability of provision in 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 06-08-2019. However, they have not availed the benefit of the said provision. The case was listed for hearing on 06-08-2019 and 21-08-2019.
- 4) The Respondent-1/AEE has filed his comments dated 07-08-2019 on the appeal memo filed by the Appellant/Complainant. He has stated

that the installation of the Appellant/Complainant was serviced on 17-02-2013 with a sanctioned load of 17 HP + 720 Watts under LT-5(B) tariff for printing press on submitting valid Form of license from Commissioner Corporation of the city, Bengaluru. Additional load of 22 HP was sanctioned on 25-10-2016 with a total load of 40 HP on submitting valid Trade of license (Power) Certificate from Commissioner, BMP, Bengaluru. Periodical inspections have been carried out to this installation and rating reports have been maintained in his office. In the periodical rating report by AEE (Ele), Meter Testing Division on 15-02-2018 has mentioned that the “premises is being used for commercial purpose” and appropriate tariff to be applied as per BESCOM norms. He has further stated that on the basis of the report of AEE (Ele) MT Division, back billing charges have been raised through a provisional demand notice dated 02-06-2018 for Rs. 5,91,178/- under the provision of Clause 42.02 of Conditions of Supply of Electricity (COS) clearly providing an opportunity to the Appellant/Complainant to file his objections. The Appellant/Complainant filed objections on 11-06-2018 and stated that he had obtained a copy of the general license from the Directorate of Industries and Commerce. The License Entrepreneurs Memorandum No. 290201200050 dated 18-06-2007. A letter was addressed to the Joint Director, District Industries Center, Bengaluru, on 23-06-2018 to know the validity of the memorandum. The Joint Director, Industries and Commerce issued an endorsement dated 05-07-2018 stating that “the information is not available”. After hearing the issue at length and giving sufficient opportunity to the consumer to submit the necessary documents, a speaking order was passed on 04-08-2018 that the back billing charges

notice for Rs. 5,91,178/-, under the provision of Clause 42.02 of Conditions of Supply of Electricity (COS) was in order.

Aggrieved by this order, the Appellant/Complainant filed a complaint before the CGRF Bengaluru Urban District on 24-08-2018 and the CGRF heard the issue at length and passed an order on 09-07-2019, stating that the matter falls under Section 126 read with Section 145 of the Electricity Act 2003, the CGRF has no jurisdiction to hear the matter as per KERC Regulations, 2004. Hence the matter deserves to be dismissed. Further a letter has been addressed to the consumer on 25-07-2019 to pay the back billing charges amount therein providing liberty to approach the appropriate appellate authority within 30 days from the date of the order. The installation was serviced under LT-5 tariff on the basis of general license issued by the Commissioner BBMP dated 05-10-2005 for running "Printing Press". Hence on the basis of BBMP general license the installation was serviced under LT-5 tariff. The speaking order passed on 04-08-2018 is correct and is in order.

- 5) The Appellant/Complainant in his rejoinder dated 21-08-2019 to the comments filed by the Respondent-1/AEE has stated that the contention of the Respondent-1/AEE that the installation was serviced on 17-02-2013 is totally incorrect and misleading. The installation was serviced during the year 2007 with the existing digital press. The additional load to an extent of 22 HP was serviced on 25-10-2016 with the existing machines and even at that point the Respondent-1/AEE did not find any fault with the Tariff LT-5(B) under which the installation was classified. The submissions of the Respondent-1/AEE that periodical inspections have been carried out to the installations is a clear admission of the veracity of the inspection year after year. The

application of a tariff, based on the activity pursued falls within the exclusive jurisdiction of the Jurisdictional Sub Divisional Officer. Any speculative opinion with regard to the applicability of tariff has to be decided by the concerned Sub Divisional Officer before initiating action. He is duty bound to furnish reasons to reclassify an activity and has to take recourse to Clause 3.04 of the Conditions of Supply of Electricity (COS). An activity cannot be termed as “misuse” which the Licensee himself has classified under a particular tariff at the time of service. There is no provision for applying Clause 42.02 of Conditions of Supply of Electricity (COS) (misuse of electricity) and seeking validity of a certificate by furnishing incorrect details. The certificate is dated 18-05-2007 whereas the information sought was in respect of one dated 18-06-2007. This apart, the furnishing of a certificate issued by the Directorate of Industries and Commerce is not a precondition either to service an installation or fixing up a tariff. The tariff of an installation is fixed based on the activity pursued. The action on the part of the Respondent-1/AEE was malafide. Hence the office communicated to has very lightly replied that the “information” is not available. The order passed by the Respondent-1/AEE confirming the back bill lacks credibility for reasons stated above. The order of the CGRF which was 2;1 failed to evaluate the issue objectively and has acted in a way not conducive to its establishment under Section 42.05 of the Electricity Act to the grievances of a consumer. The tariff schedule covering Tariff LT-5(B) mentions that the tariff applicable to printing presses; it means and covers a digital press as well. The confusion is the result of the refusal to be abreast to the technological advance in the field of printing while producing herewith some of the

printed material including the brochure of the machinery installed therein. It is prayed to confirm the tariff applicable to the activity as coming under the Tariff Schedule LT-5(B) in the interest of justice.

- 6) Perused the appeal memo, parawise comments/remarks submitted by the Respondent-1/AEE and the rejoinder to that submitted by the Appellant/Complainant. As admitted by the Respondent-1/AEE the Appellant/Complainant was serviced power sanction under LT-5(B) tariff for printing press on submission of valid Form of license from Commissioner Corporation of the City, Bengaluru. The Respondent-1/AEE further goes on to say that additional load of 22 HP with a total load of 40 HP was further sanctioned on submission of valid Trade License (power) certificate from Commissioner, BMP, Bengaluru. The Respondent-1/AEE has further said that periodical inspections have been carried out to this installation and rating reports have been maintained in his office. The trigger of dispute arose by the periodical rating by AEE (Ele), Meter Testing Division on 15-02-2018 which mentioned that “premises is being used for commercial purposes” and appropriate tariff to be applied as per BESCOM norms. As per the submissions made by Respondent-1/AEE, on the basis of the report of AEE (Ele) Meter Testing Division back billing charges have been raised through a provisional demand notice dated 02-06-2018 for Rs. 5,91,178/- under the provision of Clause 42.02 (misuse of Electricity) of Conditions of Supply of Electricity (COS). The classification of an activity pursued by the consumer falls under the exclusive jurisdiction of the Jurisdictional Sub Divisional Officer. The report of the AEE (Ele), Meter Testing Division dated 15-02-2018 only mentioned that “premises is being used for commercial purposes” and

appropriate tariff to be applied as per BESCOM norms. This report of the AEE (Ele) Meter Testing Division is only an observation/opinion regarding the activity carried on in the premises of the consumer. The AEE (Ele) Meter Testing Division is not a superior officer nor is he an appropriate authority to decide the classification of the activity. On the other hand, it is the Jurisdictional Sub Divisional Officer i.e., AEE (Ele) who is the appropriate authority who is also designated as Assessing Officer who should be convinced about the observation/opinion of the inspecting officer before taking any further action on the report. The records/documents placed before this authority do not show any application of mind by the Respondent-1/AEE who is also the Assessing Officer before acting on the report of the AEE (Ele) Meter Testing Division. The provisional document notice dated 02-06-2018 issued by the Respondent-1/AEE further strengthens the arguments that the notice is being issued solely on the basis of the report of AEE (Ele) Meter Testing Division.

- 7) As per the submission made by the Respondent-1/AEE himself in his submission dated 07-08-2019 the installation of the Appellant/Complainant was serviced under LT-5(B) for printing press on submission of valid Form of license from Commissioner Corporation of the city, Bengaluru. Additional load of 22 HP was also sanctioned on 25-10-2016 with a total load of 40 HP on submission of Valid Trade License (power) certificate from Commissioner, BMP, Bengaluru. The Respondent-1/AEE has further admitted that periodical inspections have been carried out to this installation and rating reports have been maintained in his office. In the absence of any report from the Commissioner, BMP, Bengaluru, on whose valid Form of license/valid

trade license certification, the activity of the Appellant/Complainant was categorized under LT-5(B), there was no need for the Respondent-1/AEE to take action only on the report of the AEE (Ele), Meter Testing Division.

Even assuming that the Respondent-1/AEE on the report of the AEE (Ele) Meter Testing Division dated 15-02-2018 was convinced that the installation is being used for commercial purpose, the proper procedure for reclassification of the installation envisaged in Clause 3.04 of the Conditions of Supply of Electricity (COS) should have been followed which reads as follows: -

3.04 RECLASSIFICATION OF CONSUMER

If it is found that a Consumer has been classified under a particular Tariff category erroneously, the Engineer of the Licensee may reclassify such Consumer under the appropriate category after issuing notice of 15 clear days to him to execute a fresh Agreement duly observing other Conditions, if required, on the basis of the altered classification.

If the Consumer does not take steps within the time indicated in the notice to execute the fresh Agreement duly observing the required conditions, the Engineer, may disconnect the supply of power, after issuing a clear fifteen days notice and after considering his explanation, if any. **In case of disconnection of Power Supply, reconnection shall be effected as soon as the fresh agreement is executed.**

- 8) Without following this procedure blindly accepting the observations/opinion of the AEE (Ele) Meter Testing Division without application of mind and issuing provisional demand notice dated 02-06-2018 for Rs. 5,91,178/- under the provision of Clause 42.02 (misuse of electricity) of Conditions of Supply of Electricity (COS) is incorrect, as the present categorization of the Appellant/Complainant's

installation had been classified under LT-5(B) i.e., industrial purpose by the Respondent-1/AEE himself based on the documents submitted by the Appellant/Complainant, obtained from the Commissioner BMP, Bengaluru City. Even in the letter seeking clarification written to the Joint Director, Industries and Commerce, District Industries Centre (DIC) Bengaluru District, the date of the original certificate issued by the Joint Director, DIC, has been wrongly mentioned. In the original certificate issued by the Joint Director, DIC, date is mentioned as 18-05-2007 whereas in the clarification letter written by the Joint Director, DIC, this date is mentioned as 18-06-2007, and the Joint Director, DIC, has clarified that there is no information available in his office on the certificate issued dated 18-06-2007.

- 9) As per the Tariff order issued by KERC from time to time, “Printing Presses” have been classified under LT-5 category of tariff. In the application for sanction of power submitted to the Licensee, the Appellant/Complainant has mentioned that the purpose of taking power is “Printing machine, laser printing, lamination”. As per the Tariff order there is no other category under which printing presses whether manual or digital or any other type can be classified other than LT-5(B). In the final order issued by Respondent-1/AEE dated 04-08-2018, it is mentioned the Appellant/Complainant should regularize the installation under LT-3 tariff after observing the formalities. However, it is to be observed that in the Tariff order there is no mention of “Printing Press” under LT-3 category.
- 10) In the absence of a contradictory report from the Commissioner, BMP Bengaluru City, on whose certificate the electrical installation of the Appellant/Complainant was categorized under LT-5 i.e., industrial,

there was absolutely no need for the Respondent-1/AEE to issue a provisional demand notice. Even if, the Respondent-1/AEE was convinced about the wrong classification of the installation at the time of sanction of power, he could have changed the classification by following the procedure enumerated in Clause 3.04 of Conditions of Supply of Electricity (COS). The CGRF in their order dated 09-07-2019 have erred in stating that the matter falls under section 126 read with section 145 of the Electricity Act, 2003 and the CGRF has no jurisdiction to hear the matter as per KERC Regulations, 2004. The present case neither falls under Section 126 and 145 of The Electricity Act - 2003 nor Clause 42.02 of Conditions of Supply of Electricity (COS).

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

No. OMB/B/G-350/2019/D-1389

Dated: 19-11-2019

O R D E R

1. The Appeal/Complaint is allowed.
2. The order of CGRF No. CGRF 27/2018-19/27-08-2018/1511-13 dated 09-07-2019 is here by set aside.
3. The final order passed by Respondent-1/AEE dated 04-08-2018 is also set aside.

Sd/-
(S.S Pattanashetti)
Electricity Ombudsman.

- 1) Sri K.A. Harinath
M/s. Futura Digital Press,
14, 15, 4th Main, 2nd Cross, Chamarajpet,
Bengaluru – 560018.
- 2) Shri M.A Delvi, Advocate,
#8, 3rd Cross, Pottery Town,
Bengaluru – 560046
- 3) The Assistant Executive Engineer (Electrical),
W-2 Sub Division, BESCOM, Chamarajpet,
Bengaluru.
- 4) Chairman, Consumer Grievance Redressal Forum/(CGRF)
Bengaluru Urban District,
West Circle Office, BESCOM,
CA Site, No. 05, West of Chord Road,
3rd Stage, Bhima Jyothi, HSBC Layout,
Next to Chord Road Hospital, Basaveshwarnagar,
Bengaluru – 560079.
- 5) PS to Hon'ble Chairman, KERC
- 6) PS to Hon'ble Member (M), KERC
- 7) PS to Hon'ble Member (R), KERC
- 8) PA to Secretary, KERC.
- 9) Chairperson of all CGRF's in the State.