

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/C/G-383/2019

Dated 20/01/2020

In the matter of

M/s. Venkat Motors,
Plot No. 326,
KIADB, Industrial Growth Centre,
Holenarsinapura Road,
Hassan – 573201.
Hassan Taluk and District.

Appellant

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Vs

1) The Assistant Executive Engineer (Electrical),
O & M KIADB Sub-Division, CESC,
Hassan District.

2) Chairperson, Consumer Grievance Redressal Forum/(CGRF)
Hassan District,
Superintending Engineer (Ele),
O & M Circle, CESC,
Hassan District.

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Respondents

1) This Appeal/Complaint is filed before this Authority, by M/s. Venkat Motors, (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. ಸಿ.ಜಿ.ಆರ್.ಎಫ್/ಹಾಸನ/2019-20/2692-2703, dated 12-11-2019 of CGRF, Hassan District, by inter-alia seeking the following reliefs:

To reconsider the decision of CGRF, Hassan District and restore justice as there is no fault on their part.

- 2) Brief facts, which are relevant to the case on hand, as claimed by the Appellant/Complainant are as follows:
- 3) The Appellant/Complainant is an authorized dealer of Maruti Cars and runs a workshop in Hassan since from the year 2007. While filing application for power connection before the office of the Respondent-1/AEE on 12-07-2006, the Appellant/Complainant has clearly stated in his application that it is for workshop and godown, and after verifying the same, power connection was given to the Appellant/Complainant. On 04-04-2007 an agreement came to be entered in to between the Respondent-1/AEE and the Appellant/Complainant for supply of electricity with certain conditions. After enquiry of the premises in question belonging to the Appellant/Complainant, the office of the Respondent-1/AEE issued grant certificate on 06-01-2007 bearing No. 6028 applying LT-5 Tariff. On the said grant RR number came to be generated and stood registered and numbered as RR No. GCP 51. On 04-04-2007 after enquiry by the wiring contractor inspection report also, it has been stated that the Appellant/Complainant can run the premises for LT-5. On 10-09-2018, the vigilance wing of BESCOM and on 20-12-2019 the AEE (Ele) and Meter Testing Assistant are alleged to have visited the Appellant/Complainant's place and unilaterally concluded that there was unauthorized use of electricity at the workshop for service station purpose. On the basis of the said assumption, the installations were illegally and unauthorizedly back billed under commercial tariff for a period of 24 months prior i.e., from 13-03-2017. The said determination

was apparently based on the ground that Venkat Motors is not running a workshop but running a service station. Every year there is inspection conducted by the 1st Respondent company in the premises of the Appellant/Complainant. The 1st Respondent has conducted inspections on various dates i.e., 10-12-2007, 18-12-2008, 03-01-2012, 22-01-2013, 03-01-2014, 16-04-2015, re-inspected on 06-05-2015, 19-03-2016, 13-03-2017 and 19-02-2018. On the said inspection dates none of the inspectors have educated the Appellant/Complainant with regard to the category or installation that it should be LT-3 and not LT-5. Based upon the aforesaid vigilance report the electric power consumption charges was illegally, arbitrarily and unilaterally determined to a sum of Rs. 11,80,445/- by the Respondent-1/AEE, on the ground that there was misuse of electricity. The said action of the Respondents is totally illegal, unjust and arbitrary and is in violation of Article 14 of the Constitution of India besides being violative of Article 21 of the Constitution of India, without following the due procedure prescribed in law and ignoring their own documents issued at the time of installation. When the officials are well aware that the Appellant/Complainant is running a workshop and car godown back billing for 2 years will not apply and will not be binding on the Appellant/Complainant. In that view of the matter the back billing amount determined by the first Respondent is not in accordance with law and the said authority has failed to follow the provisions contained under Sub Section 3 of Section 126 of the Electricity Act 2003, even on this count the impugned order is liable to be set aside.

- 4) Both the parties were informed vide this office letter No. OMB/C/G-383/2019/D-1399 dated 29-11-2019, 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 18-12-2019. However, they have not availed the benefit of the said provision. The case was listed for hearing on 18-12-2019 and 09-01-2020.

- 5) The Respondent-1/AEE has filed his submissions dated 07-12-2019 received in this office on 11-12-2019. In the submissions he has stated that the Appellant/Complainant has been sanctioned 51 HP + 8500 watts power on 22-08-2007 based on his application for power sanction for Maruti Car workshop and godown, which is categorized under LT-5 Tariff as per the Tariff Order of CESC. The inspections conducted by the AEE (Ele) LT Rating Sub Division CESC Hassan on 19-02-2018 and AEE (Ele) Vigilance Sub Division CESC Hassan on 10-09-2018 and the routine inspection done on 20-02-2019 revealed that the Appellant/Complainant is not using the power sanctioned for the purpose for which it was sanctioned and gave a report that necessary back billing charges may be imposed on the consumer. Based on these reports, after inspection of the place and verification of the documents, back billing charges for a period of 1 year amounting to Rs. 11,80,455/- was imposed on the consumer. The consumer filed his objections as well as complaint before the CGRF Hassan District. The consumer in his application for sanction of power has clearly stated that power is required for Maruti Car workshop and godown, whereas power is being used for running a service station which comes under LT-3 Tariff as per the Tariff Order. The CGRF after examining all the documents and verifying the statements, has come to the conclusion that there has been

a misuse of power from LT-5 to LT-3. From September 2019 onwards the installation has been changed from LT-5 to LT-3.

- 6) In support of his stand the Respondent-1/AEE on 09-01-2020 at the time of hearing has submitted copy of Electricity Tariff Order 2005 which was the prevailing Tariff Order at the time of sanction of power to the Appellant/Complainant's premises. As per this Tariff Order "Service Stations/Garages" are categorized under LT-3 and "Workshops" are categorized under LT-5. He has also submitted Electricity Tariff Order for financial year 2020, wherein, again "Service Stations/Garages" are categorized under Tariff Schedule LT-3 and "Workshops" are categorized under Tariff Schedule LT-5. He has also submitted copies of bills issued by the Appellant/Complainant which mentions that car servicing is done at the premises.
- 7) The Appellant/Complainant has further submitted his statement along with 5 documents on 09-01-2020 at the time of hearing. He has also submitted photo of the meter board on which various dates of inspection have been written by the inspecting officers of the Licensee, CESC. He says that every year there was inspection conducted by the Licensee's representatives right from 2007 up to 2019, and not even once the Respondents brought to his notice the "Alleged" misuse of power.
- 8) Perused the appeal memo and all the documents and submissions made by the contesting parties and also the arguments put forth by them. In the application dated 12-07-2006 filed by the Appellant/Complainant for sanction of power it is clearly mentioned that the nature of industry for which power is required is "Car Workshop and Godown". In the power sanction order dated 06-01-2007 signed by the Respondent-1/AEE it is mentioned that the tariff applicable to the

installation of the Appellant/Complainant is LT-5. For the year 2005 onwards as per the Tariff Order approved by the KERC “Service Stations/Garages” come under Tariff Schedule LT-3 and “Workshops” come under Tariff Schedule LT-5. The Licensee himself has categorized the activity of the consumer under LT-5 at the time of sanction of power to the installation. It is the duty of the Respondent-1/AEE to make necessary enquiries with the Applicant, inspect the spot with regard to the activities going to start in the premises and categorize the tariff of the installation appropriately after guiding, correcting the applicant, if wrong categorization is mentioned in the application. In the present case the Respondent-1/AEE has concurred with the categorization of the tariff of the installation mentioned by the applicant in the application and sanctioned power connection under LT-5 Tariff Schedule.

- 9) The back billing charges notice issued by the Respondent-1/AEE dated 25-07-2019 addressed to the Appellant/Complainant says that the AEE (Ele) Meter Testing Sub Division, CESC Hassan inspected the installation of the Appellant/Complainant on 19-02-2018 and 20-02-2019 and reported that power connection has been obtained for Industrial purpose under LT-5 Tariff, whereas power is being used for commercial purpose under LT-3 Tariff and based on these reports back billing charges of Rs. 11,20,000/- has been generated and the same should be paid within 30 days from the date of the notice. This notice dated 25-07-2019, does not give any opportunity for the Appellant/Complainant to file objections to the notice, it also does not say that the report of the AEE (Ele) Meter Testing Sub Division has been examined by him and he is convinced about the misuse of

electricity and hence as an Assessing Officer he is issuing this notice. 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 Sub Division. The back billing charges notice dated 25-07-2019 issued by the Respondent-1/AEE strengthens the argument that the notice is being issued solely on the basis of the report of AEE (Ele) Meter Testing Sub Division. The notice issued by Respondent-1/AEE dated 25-07-2019 is against the principles of natural justice as it does not give any opportunity for the Appellant/Complainant to file his objections to the back billing charges.

10) The Appellant/Complainant has also filed a photo of the meter board of the installation wherein various dates of inspection of the installation by the Licensee's representatives have been recorded. As can be seen from this, the Licensee's representatives have inspected the installation right from 2007 up to 2018. Not even once the representatives of the Licensee have observed and brought to the notice of the Appellant/Complainant, the alleged "Misuse" of electricity. The CGRF has failed to appreciate the fact that the Appellant/Complainant was not given an opportunity by the Respondent-1/AEE to file his objections to the back billing charges notice. In this respect the order of the CGRF Hassan District is erroneous.

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

No. OMB/C/G-383/2019/D-1421

Dated 20-01-2020

O R D E R

1) The Appeal/Complaint is allowed.

- 2) The back billing charges notice issued by the Respondent-1/AEE dated 25-07-2019 is set aside.
- 3) The order of the CGRF Hassan District bearing No. ಸಿ.ಜಿ.ಆರ್.ಎಫ್/ಹಾಸನ/2019-20/2692-2703, dated 12-11-2019 is also set aside.
- 4) The Respondent-1/AEE is free to issue fresh provisional back billing notice calling for objections from the Appellant/Complainant and pass necessary speaking order after hearing the objections that may be filed by the Appellant/Complainant.

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

- 1) M/s. Venkat Motors,
Office at KIADB,
Industrial Development Centre,
Holenarsinapura Road,
Hassan – 573201.
Hassan Taluk and District.
- 2) The Assistant Executive Engineer (Electrical),
O & M KIADB Sub-Division, CESC,
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- 3) Chairperson, Consumer Grievance Redressal Forum/(CGRF)
Hassan District,
Superintending Engineer (Ele),
O & M Circle, CESC,
Hassan District.
- 4) PS to Hon'ble Chairman, KERC
- 5) PS to Hon'ble Member (M), KERC
- 6) PS to Hon'ble Member (R), KERC
- 7) PA to Secretary, KERC.
- 8) Chairperson of all CGRF's in the State.