

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-306/2018

Dated 01/03/2019

In the matter of

M/s LVD STRIPPIT India (P) Ltd,
310, 8th Cross, 4th Phase,
Peenya Industrial Area,
Bangalore-560058. -

Appellant

Vs

- 1) Consumer Grievance Redressal Forum,
Bangalore Urban District, BESCOM,
Bangalore.
- 2) The Assistant Executive Engineer (Electrical),
S-4 Sub-Division, BESCOM,
Bangalore. -

Respondents

1. This Application/Complaint is filed by M/s LVD STRIPPIT India (P) Ltd. (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 11/2018-19/03.05.2018/3671-72 dated 29/09/2018 of CGRF, Bangalore Urban District, BESCOM West Circle, Basaveswaranagar, Bengaluru-560079, before this Authority, by inter-alia seeking the following reliefs:

- a) To allow the complaint with costs;
- b) To confirm that the activity pursued attracts Industrial Tariff applicable to an Industry;

- c) To order refund of the amount of Rs 5,00,000/-deposited on 02/02/2018 to avoid disconnection; and
 - d) To grant damages and costs.
2. Brief facts, which are relevant to the case as claimed by the Appellant, are as follows:
- a) The Appellant/Complainant M/s LVD STRIPPIT India (P) Ltd, is a Company incorporated under the provisions of the Companies Act, 1956 and is a subsidiary unit of M/s LVD Belgium. The main activities and objectives of the company is; to carry on in India or elsewhere the business of manufacturing, designing, fabricating, assembling, re-assembling and reconditioning, improving, processing, melting, refining, cleaning, normalizing, buying, selling, exporting, importing, dealing in all kinds/types of machinery, machine tools, all kinds of tools like hand tools, cutting tools, pneumatic tools, tool holders, boring bars, test instruments, accessories and components, all types/kinds of equipments, including automobiles components, tools tooling, dies, fixtures, jigs, moulds, master models, templates, spindles and to undertake job work etc., the said activities in short being Industrial covering the Tariff schedule attracting industrial activity.
 - b) It is stated that for the purpose of operation of the industry, an electrical installation bearing RR No. PNP 8147 with a sanctioned load of 66 HP has been availed, and the same is in operation since 2013. The installation was being visited by the inspecting arm of the BESCOM. The installation was inspected and the Meter calibrated by the Meter Testing Wing of the BESCOM yearly. Two of the inspections conducted on 19/01/2015 and 28/04/2016 by the Meter Testing Division have clearly mentioned the activity being engineering works. It is further stated that the vigilance staff who visited on 21/06/2017, obtained the signature of a staff member without disclosing the contents nor handed over copy of any report, and there was no correspondence either from the inspecting officer or the Respondent Office.

c) It is further stated that on 12/01/2018, the respondent has sent their field staff to effect disconnection of the installation and on enquiry it was revealed that the office had issued a back bill pursuant to the inspection carried out by the Vigilance Staff on 21/06/2017, and a copy of that purported to be a provisional bill and handed over to the representative of the complainant. The demand notice was found undated without any despatch details. It is further stated that on perusal of the demand notice, it was noticed that the Respondent has back billed the installation on the basis that the premises was reported to be a Godown and that the installation has been back billed for a period between January 2017 to May 2017 for Rs. 9,30,541/- and the details of calculation were appended to the Demand Notice, and also noticed that the installation was inspected on 22/06/2017 and the Mahazar was drawn on 09/05/2017. It is further stated that on verification, it was noticed that the assertion made in the Demand Notice that the back bill was for a period between January 2017 to May 2017 was totally false. The back bill was for a period between June 2013 to May 2017 covering a period of 4 years and the date of inspection was not 22/06/2017, but the inspection was carried out on 21/06/2017. Further, it is stated in the notice that the mahazar was drawn on 09/05/2017 and the inspection was conducted on 22/06/2017 which was found to be a falsity. As a matter of rule inspection precedes mahazar. The Respondent immediately proceeded with effecting disconnection to the installation and when confronted with the fact that he has not passed a final order to proceed against the installation, the Respondent coerced the Appellant to make a deposit of Rs 5,00,000/- on 02/02/2018 and later on 15/02/2018 the office handed over what was purported to be a speaking order which was dated 25/10/2017. It is further stated that on verification of the speaking order, it clearly shows the Respondent persists with repeating his false statements. It was surprising to note that in the speaking order dated 25/10/2017, the Respondent audaciously proceeds to give an incorrect date to the Demand Notice to cover up the falsity. Therefore, the complainant approached the Respondent-2 office by a Representation dated

12/08/2017, by inter-alia seeking a spot inspection through its field staff of the industrial unit and a report on the field reality. Accordingly, the industry was inspected by the Jurisdictional Junior Engineer, Elec on 13/08/2017 and he had furnished his report wherein he has reported that the motors and machinery installed total 37 KW + 29 HP and all were in operation.

d) It is further stated that under these circumstances, the Complainant approached the CGRF to air their grievance and seek redressal. It is further stated that although a complaint was filed before the Forum on 03/05/2018 and 20/08/2018 and a hearing was conducted on 29/09/2018, the Forum unfortunately refused to hear the complaint and closed the matter for orders on that date. It is also stated that the Forum has summarily disposed of the complaint without any evidence or application of mind on the issue.

3. In the parawise replies filed by the Respondent on 19/12/2018, it is stated that on 22/06/2017, when the Assistant Executive Engineer (Vigilance Cell) of BESCO visited the premises of the Appellant, it was found that the Appellant is selling the machineries imported from Belgium. The Appellant has availed power under LT-5 for industrial purpose, but using the same under LT3 for commercial purpose, thus resulting in misuse of power. The Respondent further says that on the basis of report of Assistant Executive Engineer (Vigilance Cell), a provisional back billing notice bearing No. ಸಕಾನಿಇಂ(ವಿ)/ಎನ್-4/ ಸ.ಲೇ/2017-18/3086 dated 17/08/2017 for Rs 9,31,541/- was sent to the Consumer asking him to file objections, if he has any, within 15 days. As the Consumer did not express any objections for payment of back billing charges of Rs 9,31,541/-, final orders were issued bearing No. ಸಕಾನಿಇಂ(ವಿ)/ಎನ್-4/ವ್ಯ(ತಾಂ)/2016-17/3550 dated 25/10/2017. The

consumer has paid Rs 5,00,000/- on 02/02/2018. As the consumer was selling the machineries imported from Belgium on the basis of the report of A.E.E (Vigilance Cell), the consumer is using power under LT3 category, the appeal of the consumer may be rejected.

4. The Appellant in his submission made on 10/01/2019, by way of rejoinder to the parawise replies filed by the Respondent and also written arguments filed on 10/01/2019, has stated that the activity pursued by the Appellant was repeatedly certified by the Investigation wing of the licensee on 19/01/2015 and 28/04/2016 by the Meter Testing Division of the licensee, who has mentioned the activity pursued as 'Engineering' in their reports of testing. While acting on the faulty and clumsy report filed by the Vigilance Assistant Executive Engineer dated 21/06/2017, the Respondent as an Assessing Officer ought to have considered the inspection reports filed by the Meter Testing Division dated 19/01/2015 and 28/04/2016. He had a closed mind on this issue. While acting on the report dated 21/06/2017 filed by the Vigilance, the Respondent was duty bound to act in accordance with the provisions of S126 of the Electricity Act, 2003 in its entirety. He was found acting contrary to the provisions and has failed to act in accordance with its contents. At the request of the Consumer, the unit was inspected by the jurisdiction Engineer, who in his report dated 13/08/2017, has furnished details of the motors and machineries on the system that totally equals the sanctioned load of 66 H.P. The recorded consumption that averages about 3500 units per month clearly reflects, it is industrial use. The Respondent has very cleverly concealed this vital evidence. The definition of a factory as

provided in Clause 2.31 and 2.32 very aptly fits to the premises of this unit. Even big Industries like ITI or BEL procure their requirements from other units or from their own subsidiaries, assemble and distribute the end goods under their brands. They do not become a godown by procuring parts from other sources. CGRF very unfortunately and without application of mind refused to even hear and dismissed the appeal on the sole ground that the installation has been bracketed under Clause 42.02 of Conditions of Supply of Electricity and hence the dispute does not fall under their purview and by an order dated 29/09/2018 they dismissed the complaint. This flaw has to be remedied. It is prayed this authority be pleased to order continuation of application of Industrial Tariff to the subject installation in the interest of justice.

5. After careful examination of the documents filed and submissions made by the contesting parties, the issues arising for consideration are:

- 1) Whether the Respondent A.E.E actually despatched the provisional Demand Notice and final Demand Notice to the Appellant?
- 2) Whether the activities conducted in the premises of the Appellant amount to industrial use or commercial use?

6. My findings are

- 1) In the negative;
- 2) In the negative.

- 1) In the final order dated 25/10/2017 issued by the Respondent-2, it is mentioned that the provisional Demand Notice was issued dated 07/10/2017 and the consumer has not filed any objections to the same. A copy of the provisional Demand Notice for back billing charges has been submitted by the Appellant alongwith

his Appeal Memo. This provisional Demand Notice does not bear any number nor does it bear any date. The final order dated 25/10/2017 bears dispatch No. 3550. The contention of the Appellant is that this final order copy was received by him on 15/02/2018 after disconnection of the installation. This final order copy was handed over to the Appellant when the Respondent was confronted with the fact that he has not passed the final order to proceed against the installation. To verify the allegations of the Appellant that he was not served with either provisional Demand Notice or Final order, the Respondent was asked to bring the Despatch Register of his office. It is observed that Sl. No. of the Final order is 3550, in the Register, this document is also numbered as 3550, but in the space meant for to whom it is sent (ಯಾಕರಿಗೆ) in the column, it is blank. In the Register there is an entry as Sl.No. 3550A which says that it is a letter sent to “Executive Engineer, Ele. Peenya Division, BESCOM”. Even if an additional number is to be given, it will be given as ‘A’ after the original number, for example, if additional No. to Sl.No.1 is to be given 1A will be given after Sl.No.1 and not before Sl.No.1. In this case, 3550A is given before 3550, in the column to whom it is sent (ಯಾಕರಿಗೆ) there is no entry i.e., it is kept blank. The Respondent A.E.E when questioned about this says, that it is a mistake of his office. This creates a suspicion regarding the authenticity of the entry, and a doubt whether any notice was issued and despatched. Hence, I hold that no notices were issued to the Appellant in the first place, these documents were created later and an attempt was tried to cover up the lapses.

- 2) The installation of the Appellant bearing R.R No. PNP8147 with the sanctioned load of 66 HP was serviced on 28/05/2013 under the classification installation tariff LT_5. As claimed by the Appellant their unit is a subsidiary of LVD Belgium, manufacturers, assemblers, execute orders and deliver goods of

the brand LVD and hence it was aptly classified under installation tariff (LT_5) by the licensee. Even in the Memorandum of Association of LVD-STRIPPIT India (P) Ltd., the main objectives of the Company to be pursued on its incorporation are designing, manufacturing, fabricating, assembling, improving, buying, selling, importing, exporting and dealing in all kinds/types of pressing. As per Consumer Protection Act, 1986, the definition of manufacturer is as follows:-

Definition: (J) Manufacturer means a person who:

- (i) Makes or manufactures any goods but assembles parts thereof made or manufactured by others and claims the end product to be goods manufactured by himself, or
- (ii) Puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer and claims such goods to be goods made or manufactured by himself.

The premises of the Appellant was also inspected by this Authority on 14/01/2019. There was no activity, which goes to prove that the premises is being used as a godown for commercial activity. What was found was, activities of designing, assembling, manufacturing, fabricating etc. Hence, the contention of the Respondent that the premises is being used for commercial activity and charging the Appellant on Commercial Tariff is incorrect.

7. For the foregoing reasons, I proceed to pass the following:

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Dated 01/03/2019

O R D E R

- a) The Appeal is allowed;
- b) The activity pursued in the premises of Appellant is industrial in nature and the contention of the Respondent that it is commercial is rejected;
- c) The final order of back billing charges of the Respondent dated 25/10/2017 is set aside and the Respondent is directed to refund the amount of Rs 5,00,000/- (Rupees Five Lakhs only) alongwith interest upto the date of refund.
- d) The licensee to conduct enquiry against Respondent No.2 for trying to create concocted documents and act of negligence and dereliction of duty with regard to the dates mentioned in connection with misuse of power in the final order dated 25/10/2017.
- e) The order of CGRF bearing No.CGRF11/2018-19/03.05.2018/3671-72 dated 29/09/2018 is quashed.

Sd/-

(S.S Pattanashetti)
Electricity Ombudsman.

- 1) M/s LVD STRIPPIT India (P) Ltd,
310, 8th Cross, 4th Phase,
Peenya Industrial Area,
Bangalore-560058.
- 2) The Chairperson, CGRF/Superintending Engineer,
Bangalore Urban District, BESCOM,
C.A Site No.05, West of Chord Road,
3rd Stage, Bhima Jyothi, HBCS Layout,
Next to Chord Road Hospital,
Basaveshwarnagar,
Bangalore-560079.

- 3) The Assistant Executive Engineer (Electrical),
S-4 Sub-Division, BESCO,
Bangalore.
- 4) PS to Hon'ble Chairman, KERC
- 5) PS to Hon'ble Member (A), KERC
- 6) PS to Hon'ble Member (M), KERC
- 7) PS to Secretary, KERC.

