

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-315/2019
Dated 06-06-2019

In the matter of

M/s Basavaraj Cotton Pressing Unit
(A Partnership concern),
Survey No. 5A/18,
Naragund,
District-Gadag.

Represented by:
Shri Tushar M.Baddi,
Arihant Park, Keshwapur,
Hubballi-580023. -

Appellant

Vs

- 1) The Assistant Executive Engineer (Electrical),
O & M Sub-Division, HESCOM,
Naragund, District-Gadag.
- 2) The Chairman, CGRF, Gadag District,
O/o of the Superintendent Engineer (Elec.)
O & M Division, HESCOM,
Gadag. -

Respondents

1. This Application/Complaint is filed by Shri Mahantappa M. Nandi, Partner, M/s Basavaraj Cotton Pressing Unit (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 passed by CGRF Gadag District, bearing No. ಅಇಂ(ವಿ)/ಉಲೆನಿ/ಗ್ರಾಕುಂಕೊನಿವೇ/ಗದಗ/ಕಡತ-19(ಹಿಂದಿನ ಪ್ರಕರಣ ಸಂಖ್ಯೆ : 15)/ಸಿವೈ ಎಸ್-09 dated 28-12-2018, before this Authority, by inter-alia seeking the following reliefs:

- a) To call for records;
- b) To direct the Respondent No.1 to set right the Revenue Accounting as per norms;
- c) To refund 50% of assessed amount deposited with the Respondent licensee at the time of preferring appeal.
- d) To award interest as per KERC guidelines on the actual number of months delayed to refund the 50% of the actual Back Billing Charges for the period starting from November 2010 till this date;
- e) To quash the impugned order dated 28-12-2018 in CYS-09 passed by Respondent-2 in the interest of justice and equity;
- f) To direct the Licensee to refund the Revenue Charges paid so far under LT-3 Commercial Tariff i.e., from day one of inspection;
- g) To direct the head of HESCOM to take strict action against the Respondent individual for his willful disobedience;
- h) To award compensation under the provisions of clause (b) of sub-clause 9.1 of KERC (CGRF & Ombudsman) Regulations (Amendment Regulation 2007) vide Notification No. KERC/D/01/07 Bangalore dated 30-05-2007; and
- i) To pass any other order as this Authority deems fit and proper in the nature and circumstances of the case, in the interest of justice and equity.

2. Brief facts, which are relevant to the case, as claimed by the Appellant are as follows:

- a) The Appellant/Complainant unit was set up for Industrial Activity during November 1996 duly obtaining power/electricity installation license under LT-5 from HESCOM with an energy meter bearing R.R No. NRDMP 108. It is stated that the HESCOM officers have visited the premises on 21-08-2010 and booked a case under misuse of Tariff. The Respondent No.1 issued the impugned communication on 26-08-2010 to pay the Back Billing Charges for a period of 6 (six) months under LT-3 Commercial Tariff to the tune of Rs 63,993/-,

- b) It is further stated that the Vigilance staff of licensee visited the premises on 21-09-2010 and it was alleged that the installation was used for commercial purpose and the same was categorized under Misuse of Tariff. On account of this the Respondent-1 revised the previous 6 (six) months Back Billing Charges for a period of one year and issued a calculation sheet terming it as a Final Bill on 12-11-2010 to the tune of Rs 2,22,051/- and no opportunity was given to file objections as specified in terms of clause 29.03 of KERC Conditions of Supply. It is further stated that the Assessing Officer without ascertaining the facts of the case in terms of clause 29.03 and 42.07 of KERC Conditions of Supply issued the impugned communication stating that “since the installation was serviced under LT-5 tariff and on inspection it is noted by the vigilance wing that the installation is used for LT-3 activity therefore it is directed by the vigilance wing to collect Rs 1,23,926/- if at all the Back Billing Charges is not paid within seven days, the installation will be disconnected.” The Appellant filed his objections before the Respondent-1 on 20-12-2010. The Respondent-1 issued demand notice dated 28-12-2010 to deposit 50% of the aforesaid claims i.e., Rs 62,000/- which was paid by the Appellant on 01-01-2011.
- c) It is further stated that the Superintending Engineer (Ele.) GESCOM, Bellary also being the Revenue Appellate Authority was pleased to dismiss the claims made by the Respondent-1 and opined to state that the demand is wrong and the claims made so far under Commercial tariff should be withdrawn. It is further stated that the Appellant in order to comply with the order of the

Revenue Appellate Authority i.e., to refund the 50% of the Back Billing Charges deposited alongwith the Revenue Charges paid so far under Commercial Tariff addressed a letter to the Respondent-1, and since there was no response from the concerned licensee and thereby several reminders were sent on different dates. Being aggrieved by the delay of the licensee the Appellant herein filed a complaint before the CGRF-HESCOM, Gadag. The Respondent-2 without taking into account the contentions raised by the Appellant, has dismissed the complaint under clause 6.1 of the KERC (CGRF and Ombudsman) Regulation, 2004. Hence, this complaint is filed before this Authority, with a prayer to direct the Forum to examine the delay condonation and to hear the matter on merits.

3. Both the parties were informed vide this office letter No. OMB/H/G/G-315/2019/D-1189 dated 28-01-2019, regarding availability of provisions 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 07/02/2019. However, they have not availed the benefit of the said provision. The case was listed for hearing on 07/02/2019, 19/02/2019, 28/02/2019, 08/03/2019, 19/03/2019 & 03/04/2019.
4. Heard both the parties. The Respondent-1 has filed parawise reply vide letter dated 19-03-2019, by inter-alia stating as follows:
 - a) As per the report of the Vigilance Staff dated 21-09-2010, the installation was being used for commercial purpose and the same was categorized for back billing on account of misuse of Tariff,

and a notice dated 12-11-2010 was issued to the Appellant to remit back billing charges of Rs 1,23,926/- within 7 days. In pursuance to this the Appellant has remitted 50% of the back billing charges of Rs 50,000/- & Rs 12,000/- vide Receipt Nos.043841/043842 dated 01-01-2011 respectively totaling to Rs 62,000/- and filed an Appeal before the Revenue Appellate Authority. The Revenue Appellate Authority after detailed discussions of the case, has dismissed the claims made by the Respondent on the ground that demand made by the licensee for commercial tariff should be withdrawn. However, the Appellant has got additional load under commercial tariff and accordingly the same has been sanctioned on 21/08/2012 and 13/02/2013. The Respondent-1 passed an order adjusting the said deposit amount towards monthly consumption charges payable by the Appellant and the delay is caused due to administrative reasons. It is further submitted that the Appellant has challenged the order passed by the Respondent-1, before the CGRF Respondent-2 after a lapse of 10 months which is contrary to KERC (Conditions of Supply of Electricity Regulations 29.08 and Standards of Performance-11. In pursuance to this, the Appellant is not liable to claim interest of Rs 50/- per day for the delayed period, and urged this Authority, the grounds raised by the Appellant in the Appeal is liable to be dismissed.

5. The Appellant's Representative has filed Additional Memo dated 28/02/2019, which is taken on record, by inter-alia stating that on perusal of the calculation sheet provided by the Respondent, a sum of Rs 1,56,696/- including Rs 62,000/- is withdrawn in the month of March 2017, as per the order of the Superintending

Engineer(Ele.) & the Revenue Appellate Authority, GESCOM, Bellary. It is submitted that Respondent has admitted that the total back billing charges as on the count of misuse of tariff is Rs 2,22,050/- whereas the Revenue charges paid under LT-5 i.e., Rs 66,503/- was deducted and total back billing charges was accrued to the tune of Rs 1,55,547/- and out of which Rs 31,632/- was initially paid by the Appellant during Level-2 inspection was deducted and after this the remaining amount of Rs 1,23,926/- was demanded and the whole process was challenged duly depositing Rs 62,000/- as 50% of the assessed amount. It is further submitted that the calculation has not been done properly and without verification and adjudication as per law, and still being billed at LT-3 (commercial) instead of LT-5 (Industrial) which results in collection of excess tariff determined/fixed under LT-5 category for the period from 21/08/2010 till date and the same is impugned calculation submitted by the Respondent. It is further submitted that refund of 50% of assessed amount deposited with the Respondent licensee at the time of preferring appeal under section 127 i.e., Rs 62,000/- and Rs 31,621/- is yet to be refunded and misleading the Appellant that the pre-deposited amount is included in the amount already withdrawn by the Licensee, and urged before this Authority to direct the Respondents to refund the principle amount pre-deposited for preferring appeal alongwith applicable interest. Therefore, the Appellant has urged the Authority to set aside and quash the impugned order of Respondent No.2 and therefore prayed to observe the principles of natural justice.

6. After careful examination of Appeal Memo, the parawise replies furnished by the Respondent, arguments putforth by both the parties and the additional documents submitted by them, the following issues arise for consideration:
- 1) Whether the Appellant is entitled for refund of 50% of amount deposited with the Respondent licensee at the time of preferring appeal;
 - 2) Whether the Appellant is entitled for award of interest as per KERC guidelines on the actual number of months delayed to refund the 50% of the actual back billing charges for the period starting from November 2010;
 - 3) Whether the licensee is entitled for refund of Revenue charges paid so far under LT-3 commercial tariff from day one of inspection;
 - 4) Whether the Appellant is entitled for award of compensation under the provisions of Clause (b) of Sub-clause 9.1 of KERC (CGRF & Ombudsman) (Amendments Regulations 2007) vide Notification No. KERC/D/01/07 Bangalore dated 30-05-2007.
7. In response to the above points my findings are as follows:
- (1) In the Affirmative;
 - (2) In the Affirmative;
 - (3) In the Affirmative;
 - (4) In the Negative.

Reasons:

- 1) In view of the fact that the Revenue Appellate Authority/ Superintending Engineer (Ele.) GESCOM, Bellary vide his order No. ಅಇ೦(ಁ)/ಓಲೇನಿ/ಹಿಸ-1/11694-99 dated 29-02-2016 has held that the licensee has failed to prove the charges of misuse of power against the Consumer, the back billing charges levied on the consumer is wrong and it should be withdrawn, the amount deposited by the Appellant with the Respondent Licensee at the time of preferring appeal has to be refunded. However, the Respondent in his submission dated 16-03-2019 made to this Authority at the time of hearing, has said that after the orders of the Revenue Appellate Authority/ Superintending Engineer (Ele.) GESCOM, Bellary, dated 14-03-2016, the back billing charges paid by the Appellant has been adjusted by the Respondent in J.V No. 62 dated 28-02-2017 in Rs 1,56,911/-. After verification the Respondent should refund 50% of the amount deposited by the Appellant in case it is not included in the amount above.
- 2) The Revenue Appellate Authority/Superintending Engineer, GESCOM, Bellary in his order dated 29-02-2016 has held that the licensee has failed to prove the charges against the consumer and ordered for withdrawal of the back billing charges. From this date giving reasonable time of two months, the back billing charges paid by the Appellant should have been adjusted within this period. In the present case the Respondent in his submission dated 16-03-2019 has admitted that there was a delay in adjustment of the back billing charges which was on account of administrative reasons.

Hence, the Appellant is entitled for interest as per KERC guidelines on the actual number of months delayed to refund/adjust the 50% of the actual back billing charges for the period starting from 01-05-2016 (two months from the date of order of the Revenue Appellate Authority)

- 3) The Revenue Appellate Authority has held that the licensee has failed to prove misuse of power charges levelled against the Appellant and the back billing charges imposed on the Appellant by the licensee is incorrect and it should be withdrawn.

In view of this order the installation should be treated under LT5 and not under LT3. So, the Appellant is entitled for refund of difference in revenue charges between LT-3 and LT-5 from the date of inspection.

- 4) The Appellant is not entitled for award of compensation under the provisions of Clause (b) of Sub-clause 9.1 of KERC (CGRF & Ombudsman) (Amendments Regulations 2007) vide Notification No. KERC/D/01/07 Bangalore dated 30-05-2007, as it was not agitated by the Appellant before the CGRF.

8. In view of the above discussions, I proceed to pass the following order:

No. OMB/H/G-315/2019/D-

Dated 06-06-2019

O R D E R

- 1) The order of CGRF-Gadag District bearing No.ಅಇಂ(ವಿ)/ಉಲೆನಿ/ಗ್ರಾಕುಂಕೊನಿವೇ/ಗದಗ/ಕಡತ-19 (ಹಿಂದಿನ ಪ್ರಕರಣ ಸಂಖ್ಯೆ:15)/ಸಿವೈಎಸ್-09 dated 28-12-2018 is set aside;
- 2) As regard to other prayers of the Appellant:

- 1) The Respondent-1 is directed to refund 50% of the amount deposited by the Appellant at the time of preferring appeal, if not already adjusted in the bill;
- 2) The Appellant is entitled for award of interest as per KERC guidelines on the actual number of months delayed to refund/adjust the 50% of the actual back billing charges for the period starting from 01-05-2016 (two months from the date of order of the Revenue Appellate Authority);
- 3) The Respondent-1 is directed to refund Revenue charges paid so far under LT-3 commercial tariff from day one of inspection;
- 4) The Appellant is not entitled for award of compensation under the provisions of Clause (b) of Sub-clause 9.1 of KERC (CGRF & Ombudsman) (Amendments Regulations 2007) vide Notification No. KERC/D/01/07 Bangalore dated 30-05-2007.

(S.S Pattanashetti)
Electricity Ombudsman.

- 1) M/s Basavaraj Cotton Pressing Unit
(A Partnership concern),
Survey No. 5A/18,
Naragund,
District-Gadag.
- 2) Shri Tushar M.Baddi,
Arihant Park, Keshwapur,
Hubballi-580023

- 3) The Assistant Executive Engineer (Electrical),
O & M Sub-Division, HESCOM,
Naragund,
Gadag District.
- 4) The Chairman, CGRF, Gadag District,
Office of the Superintendent Engineer (Elec.)
O & M Circle, HESCOM Shivaganga Layout,
Kusugal Road,
Hubballi.
- 5) PS to Hon'ble Chairman, KERC
- 6) PS to Hon'ble Member (M), KERC
- 7) PS to Hon'ble Member (R), KERC
- 8) PS to Secretary, KERC.
- 9) Chairperson of all CGRFs in the State.

