

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-351/2019

Dated 10/12/2019

In the matter of

M/s.Triveni Digital Press,
#2952/17, 1st Cross, 'D' Block,
2nd Stage, Rajajinagar,
Bengaluru – 560010.

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

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Vs

Appellant

1) The Assistant Executive Engineer (Elec),
C-1 Sub-Division, BESCOM,
Rajajinagar,
Bengaluru-560010.

2) Chairperson, Consumer Grievance Redressal Forum (CGRF)
Bengaluru Urban District,
Superintending Engineer (Ele),
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.

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Respondents

- 1) This Appeal/Complaint is filed before this Authority, by M/s. Triveni Digital Press, (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 03/2018-19/02-04-2018/1517-19 dated 09-07-2019 of CGRF, Bengaluru District, by inter-alia seeking the following reliefs:
 - i) Allow the appeal with costs.
 - ii) Quash the majority order passed by the Consumer Grievance Redressal Forum in No. 1517-19 dated 09.07.2019 as illegal.
 - iii) Quash the final order passed by respondent No.2 in No. AEE/CL/AE(T)/2017-18/2575 dated 02-03-2018.
 - iv) Confirm the Digital Printing Press and the activities pursued being industrial hence attract LT-5 (Industrial Tariff).
 - v) Grant such other relief/reliefs as deemed justified under the circumstances of the case.

- 2) Brief facts, which are relevant to the case on hand, are as follows:

The Appellant/Complainant is a consumer of the Licensee BESCOM with an installation bearing RR No. C1MSP-4982. The installation was serviced under LT-5 Tariff with a sanctioned load of 60 HP in the name of M/s. Triveni Digital Press. The installation was inspected by the AEE (Ele) Meter Testing Sub Division on 15-12-2017, who reported that the power supply from the installation is being used for photo printing and developing activities which attracts commercial tariff. The AEE (Ele) MT Sub Division intimated to raise a back billing charges bill for the misuse of tariff as per the Conditions of Supply of Electricity (COS). On the basis of the report of AEE (Ele) MT Sub Division, the Respondent-1/AEE raised back billing charges bill through a

provisional demand notice dated 23-01-2018 for Rs. 8,97,059/- duly providing an opportunity to file objections. The Appellant/Complainant filed his objections on 03-02-2018 and prayed the Respondent-1/AEE to continue the same tariff (LT-5), but the Respondent/AEE passed final order on 27-03-2018 stating that the objections were not considerable. Aggrieved by the final order passed by the Respondent-1/AEE, the Appellant/Complainant filed a complainant before the CGRF Bengaluru Urban District on 02-04-2018. The CGRF Bengaluru Urban District by a majority of 2:1 dismissed the complaint, the Chairperson and one member opining 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 (CGRF and Ombudsman) Regulations 2004 and one member partly allowing the complaint asking the Respondent-1/AEE in the event the activity pursued at the unit attracts LT-3 Tariff he has to follow the procedure envisaged in Clause 3.04 of the Conditions of Supply of Electricity (COS) and reclassify the installation by obtaining a fresh agreement executed. Challenging the order of the CGRF Bengaluru Urban District the Appellant/Complainant has filed the present Appeal/Complaint.

- 3) Both the parties were informed vide this office letter No. OMB/B/G-351/2019/D-1333 dated 31-07-2019, 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 20-08-2019. However, they have not availed the benefit of the said provision. The case was listed for hearing on 21-08-2019, 05-09-2019 and 12-09-2019.

4) The Respondent-1/AEE in his parawise replies dated 13-08-2019 has said that the installation bearing No. C1MSP-4982 was inspected by the Assistant Executive Engineer (Ele) Meter Testing Division on 15-12-2017 and reported that the consumer is using electricity for photo printing and album and sanction for the installation has been obtained under LT-5 Tariff, whereas the installation comes under LT-3 Tariff as per regulations. Hence, it was suggested to issue back billing charges to the consumer. His office, in the letter dated 23-01-2018 issued provisional back billing bill for Rs. 8,97,059/- for the installation providing 15 days time to him to file his objections. The consumer in his letter dated 03-02-2018 has filed his objections requesting to withdraw the back billing charges and to continue the installation under LT-5 Tariff. The consumer was asked to be present for the hearing on 09-03-2018. On 09-03-2018, at the time of hearing the consumer has said that electricity is being used for printing purpose, hence, his installation should be continued under LT-5 Tariff. But the Assistant Executive Engineer (Ele) MT Sub Division has said that the installation is being used for photo printing and color laboratory. Considering the statement of the consumer and AEE (Ele) MT Sub Division final order was passed on 11-12-2017 saying that the back billing charges is proper and consumer should pay the same within 15 days. The consumer has filed an appeal on 02-04-2018 before the CGRF Bengaluru Urban District. On 09-04-2019 the CGRF has passed its order saying that the complaint does not come under their jurisdiction. The Appellant/ Complainant was issued a letter dated 22-07-2019 asking him to pay the back billing charges mentioning that an appeal may be filed within

30 days. The Respondent-1/AEE has requested to dismiss the appeal/complaint and to vacate the interim order dated 31-07-2019.

- 5) The Respondent-1/AEE has filed his parawise replies on 31-08-2019 wherein he has said that power sanction to the installation of the Appellant/Complainant was categorized under LT-5 as per the request of the consumer. He has further said that major activity in the premises of the Appellant/Complainant is photo printing, lamination and frame work. Power was got sanctioned under LT-5 Tariff and it was found to be being used for photo printing with latest technology which is under LT-3 Tariff. The activity of the applicant is photo printing using advanced technology which is already classified under tariff order which comes under LT-3 category.
- 6) The Appellant/Complainant has filed a rejoinder dated 05-09-2019 to the parawise replies filed by the Respondent-1/AEE. In this he has said that the installation bearing RR No. C1MSP-4982 was classified at the time of service in consideration of its activity, and the same activity continues to be in operation even now. The tariff provision in respect of LT-5 Tariff has while categorizing several activities coming under LT-5 Tariff mentions its category "Printing Presses" which includes a "Digital Press" as well. The AEE (Ele) Meter Testing Sub Division in utter disregard to the classification has very incorrectly mentioned in his report an activity different from the one pursued at the unit. There is no photo studio/color lab in the unit of the Appellant/Complainant. The tariff is fixed by the licensee based on the observation of the activity at the time of service and he is duty bound to record on the format provided for the purpose, the details of the machinery that he was servicing and the tariff. The tariff is not fixed at the asking of the

prospective consumer but a casted responsibility on the licensee. The tariff was fixed to the subject installation on the date of service by the licensee and from the date of service to this date there is no change in the line of activity and no misclassification.

- 7) The Respondent-1/AEE has filed his written arguments also on 09-09-2019, in which he has said that the premises is being used for color laboratory and photo printing, and the same has been classified in the Tariff Order under LT-3 category. The activity in the premises is only developing and printing photos of marriage/other programs and making album. They are not printing any books, ledger and register on paper. The above said activity is purely commercial in nature. Hence the back billing claimed from LT-5 to LT-3 is in order.
- 8) Perused the appeal memo, parawise replies and written arguments filed by the Respondent-1/AEE, rejoinder filed by the Appellant/Complainant to the parawise replies and all the documents submitted by both the contesting parties. In the application dated 21-11-2015 filed by Appellant/Complainant for sanction of power it is clearly mentioned that the name of the organization as “Triveni Digital Press and Photo Studio.” In the power sanction order dated 15-12-2015 issued by the Superintending Engineer (Ele) Bengaluru North Circle the name of the Consumer is written as “Triveni Digital Press and Photo Studio” and the power sanctioned is under LT-5 Tariff. For the year 2014-15 as per the Tariff Order approved by the KERC “Photo Studio/Colour Laboratory” falls under LT-3 category. The licensee himself has categorized the activity of the consumer under LT-5 at the time of sanction of power to the installation. Fully knowing well that “Photo Studio/Colour Laboratory” falls under LT-3 category as per the Tariff

Order it was wrong on the part of the Licensee to have sanctioned the power under LT-5. The contention of the Appellant/Complainant is that there is no change in the line of activity from the date of service to this date for the installation. The Respondent-1/AEE in the parawise replies has said that power sanction under LT-5 Tariff was communicated to the Appellant/Complainant based on his request at the time of sanction. The Appellant/Complainant is right in saying that the tariff is fixed by the licensee based on the observation of the activity at the time of service and not according to the asking of the prospective consumer but it is a casted responsibility on the licensee. Having sanctioned power supply to the installation of the Appellant/Complainant under LT-5 Tariff category, now the Respondent-1/AEE cannot take shelter saying that LT-5 Tariff was sanctioned on the request of the applicant. Merely based on the report of the Assistant Executive Engineer (Ele) MT Sub Division the Respondent-1/AEE cannot jump to the conclusion that there has been misuse of electricity and issue a provisional back billing charges notice. The AEE (Ele) Meter Testing Sub 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 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 Sub Division. The provisional back billing charges notice dated 23-01-2018 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 Sub Division.

- 9) Even assuming that the Respondent-1/AEE on the report of the AEE (Ele) Meter Testing Division dated 15-12-2017 was convinced that there was a mistake committed at the time of sanction of power and 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.**

- 10) Without following this procedure blindly accepting the observation/opinion of the AEE (Ele) Meter Testing Sub Division, without application of mind and issuing provisional demand notice dated 23-01-2018 for Rs. 8,97,059/- is incorrect, as the present categorization of the Appellant/Complainant's installation had been classified under LT-5 by the Respondent-1/AEE himself.

11) 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 laid down in Clause 3.04 of the 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 Regulation 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).

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

No. OMB/B/G-351/2019/D-1402

Dated 10-12-2019

O R D E R

1. The Appeal/Complaint is allowed.
2. The order of CGRF No. CGRF 03/2018-19/02-04-2018/1517-19 dated 09-07-2019 is here by set aside.
3. The final order passed by Respondent-1/AEE date 27-03-2018 is also set aside.
4. The Respondent-1/AEE is free to take necessary action following due process of law as per Clause 3.04 of the Conditions of Supply of Electricity (COS) for reclassification of the installation if required.

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

- 1) M/s.Triveni Digital Press,
#2952/17, 1st Cross, 'D' Block,
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Bengaluru – 560010.
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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.