

**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-352/2019**

**Dated 11/12/2019**

In the matter of

Shri. B.S Suresh Babu,  
#1732/17, Madhava Complex,  
2<sup>nd</sup> Stage, Rajajinagar,  
Bengaluru – 560010.

Represented by:  
Shri M.A Delvi,  
Advocate,  
#8, 3<sup>rd</sup> 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,  
3<sup>rd</sup> 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 Shri B.S Suresh Babu, (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 02/2018-19/02-04-2018/1514-16 dated 09-07-2019 of CGRF, Bengaluru Urban District, by inter-alia seeking the following reliefs:

- i. Allow the appeal with costs.
- ii. Quash the order passed by the majority members in No. 1514-16 dated 09-07-2019 holding it untenable.
- iii. Quash the order of the Respondent No.1 in No. AEE/C-1/AE(T)/2017-18/1956 dated 03-01-2018 holding it untenable.
- iv. Grant such other relief/reliefs as deemed justified under the circumstances of the case.

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

The Appellant/Complainant availed electricity serviced during 2007 to an extent of 13 KWs to run and operate a digital printing press through an installation bearing RR No. C1MSP-4335 and the same is in operation since then. A separate connection with a load of 1.2 KW was availed under commercial tariff to operate a photographic studio bearing RR No. W2LG-838. The Appellant/Complainant based on his need availed a further additional load of 13 KW and the power sanction intimation letter dated 21-10-2009 very clearly mentions the activities and the respective tariff applicable to the respective installation. The installation was inspected by the staff of Meter Testing Sub Division on 30-11-2017. The Meter Testing staff in their report mentioned that they had noted that power supply is being used for photo color

laboratory i.e., LT-3 “suggesting action to be taken accordingly”. The Respondent-1/AEE by a demand notice dated 11-12-2017 served a back bill for a period of 1 year amounting to Rs. 3,33,664/- to be paid within 30 days with liberty to file objections within 15 days of the notice. The Respondent-1/AEE by a communication dated 03-01-2018 without taking into consideration the Appellant/Complainant’s objections filed on 28-12-2017 passed his final order holding that no objections were filed and demanded payment of back bill amount within 15 days of the notice. Aggrieved by the action of the Respondent-1/AEE the Appellant/Complainant filed a complaint before the CGRF Bengaluru Urban District. The CGRF Bengaluru Urban District in their order dated 09-07-2019 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-352/2019/D-1334 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-4335 was inspected by the Assistant Executive Engineer (Ele) Meter Testing Sub Division on 30-11-2017 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. As per Regulations the installation comes under LT-3 Tariff, hence, the consumer needs to be issued back billing charges. For the installation bearing No. C1MSP-4335 his office issued a provisional back billing notice dated 11-12-2017 for Rs. 3,33,664/- providing 15 days time to file his objections. The Appellant/ Complainant filed his objections on 28-12-2017 to the demand notice requesting the Respondent-1/AEE to withdraw the back billing charges notice and to continue the installation under LT-5 Tariff. When the premises of the consumer was inspected along with AEE (Ele) Meter Testing Sub Division on 02-01-2018 it was found that electricity was being used for photo printing and album work. As per Tariff Order 2018 photo printing and developing activity comes under LT-3 Tariff. A final order dated 03-01-2018 was issued holding that the report of AEE (Ele) MT Sub Division is correct because photo printing and developing activity comes under LT-3 Tariff as per the Tariff Order 2018. Challenging the final order dated 03-01-2018 the Appellant/ Complainant has filed a complaint before the CGRF Bengaluru Urban District. The CGRF Bengaluru Urban District in their order dated

09-07-2019 has passed an 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 further filed his parawise comments dated 31-08-2019 wherein he has stated 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 a separate connection was availed for front office only. In the application no activity was mentioned it was just marked as LT-5. Additional load to an extent of 13 KWs under LT-5 was sanctioned based on applicant's request. As per the Tariff Order 2017 colour lab and photo studio activity comes under LT-3 Tariff. As per the Tariff Order 2017 the activity of the said installation falls under LT-3 whereas power sanction has been obtained under LT-5 Tariff, hence, it is called misuse of tariff.
- 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 stated that the installation bearing RR No. C1MSP-4335 was classified at the time of service in consideration of its activity, and 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 in its category "Printing Presses" which includes a "Digital Press" as well. The AEE (Ele) Meter Testing Sub Division in utter disregard to the tariff classification has very incorrectly mentioned in his report an activity different from the one pursued at the

unit. There is no photo studio/colour 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 dated 09-09-2019, in which he has said that RR No. C1MSP-4335 running in the name of Sri Suresh Babu is being used for color laboratory and photo printing, 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 marriages/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. The consumer representative/partner Mr. Anand S had informed before the CGRF during the hearing that they are printing photos in the presence of the advocate for Appellant/Complainant. The neighboring shops with RR No. N2EH-227 and C1P2418 are also carrying on the same activity. They have availed LT-3 Tariff for their premises.
- 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 power sanction order dated

21-10-2009 issued by the Superintending Engineer (Ele) Bengaluru North Circle for RR No. C1MSP-4335 the power sanctioned is under LT-5 Tariff. For the year 2009 as per the tariff order issued 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 Tariff. 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 comments has said that power sanctioned to the installation of the Appellant/Complainant was categorized under LT-5 Tariff as per the request of the consumer 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 30-09-2013 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 30-11-2017 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 11-12-2017 and later final order dated 03-01-2018 for Rs. 3,33,664/- 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-352/2019/D-1403**

**Dated 11-12-2019**

**O R D E R**

1. The Appeal/Complaint is allowed.
2. The order of CGRF No. CGRF 02/2018-19/02-04-2018/1514-16 dated 09-07-2019 is here by set aside.
3. The final order passed by Respondent-1/AEE date 03-01-2018 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.

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Bangalore – 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.