

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-349/2019
Dated 14/11/2019

In the matter of

Naveen Hotels Limited
Murudeshwara,
Bhatkal Taluk - 581350,
Uttara Kannada District.

Represented by:
Shri Shivaprasad Shantanagoudar
No. 302, Embassy Centre,
No. 11, Crescent Road,
Bengaluru – 560001.

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Vs

Appellant

1) The Assistant Executive Engineer (Ele),
O & M Sub-Division, Bhatkal,
HESCOM,
Uttara Kannada District – 581320.

2) Chairman, Consumer Grievance Redressal Forum/(CGRF)
Uttara Kannada District,
Superintending Engineer (Ele),
O & M Circle, Sirsi,
HESCOM,
Building #258/2, Ayyappa Nagar,
Hubli Road,
Sirsi - 581401.

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Respondents

1) This Appeal/Complaint is filed before this Authority, by Naveen Hotels Limited, (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. ಅಇಂ(ವಿ)/ಉಲೆನಿ/ಹಿಸ್-2/ಗ್ರಾಕುಂಕೊನಿವೇ/ಪ್ರ.ಸಂ.23/2019-20/ಸಿವೈಎಸ್-45 dated 01-07-2019 of CGRF, Uttara Kannada District, by inter-alia seeking to set aside CGRF Order dated, 01-07-2019 and to withdraw the bill for short claim.

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

Appellant/Complainant has availed 200 KVA power on 27-03-2001 through installation No. HT 9 from the Licensee, HESCOM. On 19-03-2009 the Appellant/ Complainant got sanctioned additional load of 100 KVA power, resulting in total 300 KVA sanctioned power. In the initial stage metering cubicle of 3 phase, 3 wire with specification of 2 PT, 2 CT was installed. Later, on 24-03-2014 it was replaced with metering cubicle of 3 phase, 4 wire with specification of 3 PT, 3CT. On 26-12-2018 the Assistant Executive Engineer (Ele) HT rating Sub-Division, HESCOM, Sirsi inspected the electrical installation HT-9 of the Appellant/Complainant and sent a report to the Respondent-1/AEE vide his meter rating report dated 26-12-2018. In this report, it was informed that, the CT connection wiring of HT-9 installation has not been given properly as a result of which the meter is recording only 50% of the usage of electricity and hence asked to recover the back billing charges from 29-04-2014 to 26-12-2018 from the consumer. Accordingly, Respondent-1/AEE issued a notice on 21-01-2019 to the Appellant/Complainant to pay temporary back billing charges of Rs. 1,81,88,063/-. The Appellant/Complainant vide his letter dated 04-02-2019 objecting to the temporary back billing

charges notice said that it is not justifiable and requested to withdraw the same. The Respondent-1/AEE taking in to consideration the objections filed by the Appellant/Complainant and also Conditions of Supply of Electricity of Distribution Licensees' in the State of Karnataka (COS) passed final order on 27-02-2019 giving the Appellant/Complainant 15 days time to pay the back billing charges of Rs. 1,81,88,063/-. Aggrieved by the final order passed by the Respondent-1/AEE dated 27-02-2019 the Appellant/ Complainant challenged the same before the CGRF Uttara Kannada District, on 12-03-2019. The CGRF Uttara Kannada District, passed its order dated 01-07-2019 rejecting the complaint filed by the Appellant/Complainant and directing him to pay the back billing charges of Rs. 1,81,88,063/- within 15 days failing which the Respondent-1/AEE was asked to disconnect the power supply. Aggrieved by the order of the CGRF Uttara Kannada District, the Appellant/Complainant has filed the present appeal/complaint before this authority. Based on the application of the Appellant/Complainant dated 17-07-2019 wherein it was requested for staying the notice No. 1402-06, dated 16-07-2019 issued by the Respondent-1/AEE, this authority issued an interim order on 17-07-2019 directing the Respondent-1/AEE not to disconnect the installation bearing No. HT-09 of the Appellant/Complainant until further orders.

- 3) Both the parties were informed vide this office letter No. OMB/H/G-349/2019/D-1318 dated 16-07-2019, 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 30-07-2019.

However, they have not availed the benefit of the said provision. The case was listed for hearing on 30-07-2019, 04-09-2019 and 04-10-2019.

- 4) The Respondent-1/AEE vide his letter dated 25-07-2019 has submitted his response to the Appeal/Complaint of the Appellant/Complainant. He has mentioned in the letter that the Appellant/Complainant has obtained power sanction of 200 KVA to his installation No. HT-9 from HESCOM, which has been commissioned on 27-03-2001. The Appellant/Complainant has got sanctioned additional load of 100 KVA on 19-03-2009, thus resulting in total 300 KVA power sanction. In the initial stage HT-9 installation was provided with metering cubicle of 3 phase, 3 wire with specification of 2PT, 2CT. Later, on 24-03-2014 this cubicle was replaced with 3 phase, 4 wire of 3PT, 3CT specification. On 26-12-2018 Assistant Executive Engineer (Ele), HT Rating Sub-Division HESCOM, Sirsi, inspected the installation of the Appellant/Complainant and sent a report to the Respondent-1/AEE that CT connection wiring of HT-9 has not been given properly as a result of which it is recording only 50% of the consumption of electricity and therefore has informed to impose back billing charges from 29-04-2014 to 26-12-2018. Accordingly, the Appellant/Complainant who is the consumer of installation HT-9 was issued notice on 21-01-2019 to remit temporary back billing charges of Rs. 1,81,88,063/-. The Appellant/Complainant objecting to the temporary back billing charges notice, filed his objections on 04-02-2019 and requested for withdrawal of notice as it is not justifiable. As per Conditions of Supply of Electricity of Distribution Licensees' in the State of Karnataka (COS) Clause 29.03 a speaking order was passed on 27-02-2019 and a notice issued to Appellant/Complainant to remit Rs. 1,81,88,063/- within 15

days. Challenging the final order dated 27-02-2019 the Appellant/Complainant has filed a complaint before the CGRF Uttara Kannada District, on 12-03-2019 and requested Respondent-1/AEE not to take any action till the matter is decided by the CGRF. The CGRF on 01-07-2019 passed an order on the complaint of the Appellant/Complainant rejecting his complaint and directing him to pay Rs. 1,81,88,063/- to HESCOM within 15 days failing which the Respondent-1/AEE was ordered to disconnect the power supply to the installation. In accordance with the order of CGRF a notice was issued to the Appellant/Complainant on 16-07-2019 to pay the back billing charges of Rs. 1,81,88,063/-. The Appellant/Complainant has filed an appeal before the Ombudsman and obtained a direction that his installation bearing No. HT-09 should not be disconnected until further orders. Quoting the judgement of this authority in OMB/H/G-289/2017 the Respondent-1/AEE has prayed that it is appropriate that the Appellant/Complainant should pay the back billing charges of Rs. 1,81,88,063/-.

- 5) Perused the appeal memo, submissions made by Respondent-1/AEE, the documents submitted and the arguments put forth by the contesting parties. It is observed that the installation of the Appellant/Complainant was inspected on 24-07-2018 as part of periodical rating. The observations of the Assistant Executive Engineer (Ele), HT Rating Sub-Division, HESCOM Sirsi, is as follows:

“Observations: -

1. ETV meter accuracy test conducted in the presence of EEE, O&M Division, AEE O&M Sub-Division Bhatkal, S.O. O&M. Section Murudeshwara/representative of the consumer & found OK.

- The seal intact on CT/PT chamber and main cubicle chamber found open condition but the power supply for metering is healthy.
- On detailed inspection of CT/PT's chamber, all CT's/PT's connection are checked and found in same order connection.
- Further, Accuracy of both main/check meter checked and found their values are within its permissible limits on available load.”

In the letter of Assistant Executive Engineer (Ele), HT Rating Sub-Division, HESCOM, Sirsi, dated 26-12-2018, addressed to Assistant Executive Engineer (Ele), O & M Sub-Division, HESCOM, Bhatkal and the reading sheet enclosed to the letter there is space meant for the signature of the consumer. It is observed that this space is left blank which means to say that the representative of the consumer was not present or refused to sign the papers at the time of inspection of the installation. In the enquiry conducted by the Superintending Engineer, O & M Circle, Sirsi, the then Assistant Executive Engineer (Ele), HT Rating Sub-Division, HESCOM, Sirsi, Sri V.I. Bhat has admitted that on 29-04-2014 the CT/PT wiring connection to HT-9 installation was changed from dual ratio to single ratio. He has said that a mistake has been committed by him while giving connection to check meter due to oversight. Instead of giving series connection, parallel connection has been given. As it was his first experience and he did not know how to give connection. As no complaint was received for this installation there was no occasion to set right the mistake. The mistake was unintentional and there has been dereliction of duty and negligence on his part and the technical staff accompanying him on 29-04-2014 (Copy of the proceedings of various meetings conducted by the Superintending Engineer, O & M Circle, Sirsi have been submitted by

the Appellant/Complainant). In the CGRF order dated 01-07-2019 it is observed that as per Clause 29.08 there is a provision which states that “at any time during verification of the consumer account, for any short claims caused by erroneous billing or notice, the consumer is liable to pay the difference”. The CGRF has drawn reference to the order of Ombudsman bearing No. OMB/H/G-287/2017 dated 13-11-2018 in Suresh Y Korawar V/S the Assistant Executive Engineer (Ele), O & M City Sub-Division No.2, HESCOM Hubballi, and OMB/H/G-289/2017 dated 25-10-2018 in Smt Tejashree. K. Kemtur V/S Assistant Executive Engineer (Ele), O & M City Sub-Division No.1, HESCOM Hubballi, wherein inspite of the dereliction of duty, negligence, lapses on the part of the HESCOM Officials/Officers, the Appeal/Complaint of the consumer has been dismissed. Reserving the right of the department to take action on the erring Officers/Officials the Appeal/Complaint has been rejected and the Appellant/Complainant has been ordered to pay Rs. 1,81,88,063/- to HESCOM failing which the Assistant Executive Engineer (Ele), Sub-Division, HESCOM, Bhatkal has been directed to disconnect power supply to the installation.

- 6) The order of Ombudsman in OMB/H/G-287/2017 dated 13-11-2018 in Suresh Y Korawar V/S the Assistant Executive Engineer (Ele), O & M City Sub-Division No.2, Hubballi case, pertains to restoration of power supply without clearance of dues in the RR number. The facts and circumstances of that case are different from the case on hand. Hence it cannot be taken in to consideration for this case. However, the order of Ombudsman in OMB/H/G-289/2017 dated 25-10-2018 in Smt Tejashree. K. Kemtur V/S Assistant Executive Engineer (Ele), O&M City Sub-Division No.1, HESCOM Hubballi case, wherein the meter

reader of the Licensee HESCOM, committed a mistake by taking meter constant as 1 instead of 10 while reading the meter for the period from 01-04-2016 to 01-12-2016. In this case the procedure required to be followed for issuance of supplemental claims as per Clause 29.03 of Conditions of Supply of Electricity (COS) was followed giving the consumer an opportunity to file his objections and after considering the objections the final order was passed by the Assessing Officer i.e. Assistant Executive Engineer (Ele). The facts and circumstances in that case are comparable to the facts and circumstance of the case on hand. In OMB/H/G-289/2017 dated 25-10-2018, the Appellant/Complainant had not asked for payment of supplementary dues to the Licensee in instalments, hence, the question did not arise in that case. In the present case the Appellant/Complainant Naveen Hotels during the hearing on 04-10-2019 has made a written submission that they are ready to pay the back-billing charges in equal instalments of 56 months without interest.

- 7) It is an admitted fact that the Officers/Officials of the Licensee have committed a mistake while giving connection to the check meter on 29-04-2014. This mistake was not noticed/detected, by the inspecting officers during their various periodical inspections. The mistake committed came to light only on 26-12-2018 i.e., after 56 months. Paying back-billing charges of Rs. 1,81,88,063/- at one go would be a heavy burden on any consumer. Electricity charges payable to the Licensee would be one of the factors which any businessman or entrepreneur would take into consideration for fixing the price of his commodity or service. After a lapse of 56 months if the consumer is asked to pay double the amount of electricity charges which he has

already paid, it would be impossible for him to recover this amount from his customers/clients. However, it is also a fact that the Appellant/Complainant has utilized the electricity supplied by the Licensee and he has to pay the required charges for the same. The Licensee cannot be denied of their lawful charges for the mistakes committed by their Officers/Officials. The consumer also cannot be allowed to take advantage of the mistakes and negligence of the Licensee's Officers/Officials. The procedure required to be followed as per Clause 29.03 of Conditions of Supply of Electricity (COS) like issuing provisional notice and calling for objections, considering the objections filed and passing final orders etc., have all been followed in this case by the Respondent-1/AEE. Hence, no fault can be found in the action of the Respondent-1/AEE in having issued final orders to pay the back billing charges. Taking into consideration the heavy financial burden on the Appellant/Complainant and also keeping in mind that Licensee should not suffer because of dereliction of duty, negligence and lapses on the part of its officers/officials, it would be appropriate to order payment of back billing charges in installments.

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

No. OMB/H/G-349/2019/D-1375

Dated 14-11-2019

O R D E R

1. The Appellant/Complainant is directed to pay the back billing charges of Rs. 1,81,88,063/- to the Licensee in 48 equal monthly installments without interest.

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

- 1) Naveen Hotels Limited
Murudeshwara – 581350
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Uttara_Kannada_District.
- 2) Shri Shivaprasad Shantanagoudar
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Superintending Engineer (Ele),
O & M Circle, Sirsi, HESCOM,
Building #258/2, Ayyappa Nagar,
Hubli Road,
Sirsi - 581401.
- 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.