

**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-338/2019**  
**Dated 17/09/2019**

In the matter of

Sri Manohar S/o Rangaiah,  
Brick Manufacturing Unit,  
Industrial Area, P.B Road,  
Chitradurga.

Represented by:

Sri S.Umapathy,  
# 3700, Shri Karisiddeshwara Krupa,  
M.C.C 'A' Block,  
Davanagere-577004. -

Appellant

Vs

1) Consumer Grievance Redressal Forum,  
Chitradurga District, BESCO,  
Chitradurga.

2) The Assistant Executive Engineer (Electrical),  
O & M Sub-Division, BESCO,  
Chitradurga. -

Respondents

1. This Application/Complaint is filed by Sri Manohar S/o Rangaiah (Appellant/Complainant), before this Authority under the provisions of Clause 21.2 of the KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2004, in Form 'B' challenging the letter No. CE(E)/CZ/SEE(E)(O)/AEE-1/19-20/1297-99 dated 4<sup>th</sup> May 2019 issued by Chairperson, CGRF, BESCO, Chitradurga District, by inter-alia seeking the following reliefs:

- a) To restore power supply; and
  - b) To set aside the L.T rating report of Chitradurga Sub-Division, BESCOM.
2. Brief facts, which are relevant to the case as claimed by the Appellant, are as follows:
- a) The Appellant/Complainant is a consumer of the licensee with installation No. R.R.No. P 4218 of L.T power supply having availed sanction load of 9 H.P on 15-06-2010 to his brick manufacturing unit which is located in Industrial Area, P.B Road, Chitradurga. The consumer is receiving monthly bill for power consumption charges of L.T-5 tariff and is paying electricity consumption charges regularly and promptly.
  - b) It is further stated that on 24-12-2018 the said R.R.No. P4218 was disconnected without any notice and without following any process of law which was strongly opposed by the Appellant/Complainant. The Appellant/Complainant approached the concerned BESCOM officials in this regard. It is further stated that it was surprising to note that the BESCOM officials have given 3 letters of different dates, which are supposed to have been served on him, but the same have not been received so far by him. However, on receipt of the copies of these letters from the Assistant Executive Engineer (Ele.) City Sub-Division, BESCOM, Chitradurga vide letter No. 9519-20 dated 29-03-2019, a complaint was filed before the CGRF Chitradurga on 30-04-2019. In pursuance to this, the CGRF Chitradurga District vide letter bearing No. 1297-99 dated 04-05-2019 has made an endorsement that the said complaint does not come under the purview of CGRF on the plea of section 126 and 135-139 of the Indian Electricity Act, 2003.
3. Aggrieved by the endorsement of the CGRF, Chitradurga District, dated 04-05-2019 the Appellant/Complainant has prayed before this Authority to allow the Appeal on the following grounds in the interest of equity and justice and also on principles of natural justice.

- a) The representation/complaint is only against the supply of Electricity and billing.
  - b) Section 126 of the Electricity Act does not attract the representation/complaint under any circumstances that there is no FIR against the RR No. P4218 either under section 126 or under section 135-139 of the said Act.
  - c) That the signature obtained on rating report and on 30 days and 7 days notice are not the signature of any workers of the said unit. According to rules the said notices and rating reports ought to have been sent by Registered post. The alleged rating was done on 03-04-2017. Since then, till 24-12-2018 i.e., for a period of one year eight months and 21 days the installation was not disconnected and no change of tariff at all if it was the true fact that would have been affected as per rules. Therefore, it clearly establishes the fact that the rating report is false and not in accordance with the rules. The rating matter was noticed only after disconnection on 24-12-2018 that too after the three copies issued by the official of Revenue Section of BESCO. The said rating report was not at all conducted through Mahazar to prove that water was being supplied through under ground pipe to water service station. On 03-04-2017 power supply was not at all used as there was sufficient stock of bricks and at that point of time there was no demand for bricks. So as to suit their convenience signature by the strangers is obtained and further the meter and machineries are kept in the same compound/premises in open area without locking etc.,
4. Both the parties were informed vide this office letter No. OMB/B/G-338/2019/D-1282 dated 22-05-2019, 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 04-06-2019. However, they have not availed the benefit of the said provision. The case was listed for hearing on 04-06-2019, 18-06-2019, 18-07-2019, 22-07-2019 & 02-08-2019. Spot inspection

of the premises in question was also conducted on 12.7.2019 by the Ombudsman.

5. In the parawise replies filed by Respondent-2/AEE on 01-06-2019, it is stated that as per the available documents and reports of the Assistant Executive Engineer (Ele.), MT Sub-Division, Chitradurga, power supply to the said installation was disconnected on 16-03-2019 with prior notice to the consumer to pay back billing charges. It is further submitted that the consumer has failed to make the payment of the charges levied, and the charges are claimed on the basis of rating report submitted by Meter Testing Division staff only, wherein it was clearly mentioned that water supply is made through underground pipe line to water Service Station. It is further submitted that processing for payments of back billing charges was done as per norms for mis-use of tariff and even though several notices are served duly obtaining acknowledgement of the consumer's representatives, the consumer has failed to pay the back billing charges, and further submitted that if the consumer would have paid 50% of the Back Billing Charges, power supply would have been restored for the said installation. Due to negligence on the part of the consumer, power supply has been disconnected and further submitted that as per the prevailing rules of KERC, action has been taken for disconnection of power supply to the said installation, and therefore prayed before this Authority that the appeal of the Appellant/Complainant may be dismissed.

6. Heard both the parties. After careful examination of the documents filed and submissions made by the contesting parties, the issue arising for consideration is:

Whether the Respondent-2/AEE has been able to prove that there has been a case of misuse of electricity as per Section 126 of Electricity Act and Clause 42.02 of KERC-Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

My findings to the above issue is in the Negative.

It is the contention of the Respondent-2/AEE that the Appellant/ Complainant has unauthorizedly used electricity for a purpose other than for which the usage of electricity was authorized. It is an undisputed fact that the Appellant/Complainant has availed power connection under LT-5 category for the purpose of manufacturing of bricks which falls under industrial activity i.e., LT-5. The claim of the Respondent/AEE is that water from this R.R. No. which is taken under LT-5 is being used for water service station within the same premises owned by the same Appellant/Complainant. The activity of water service station falls under LT-3 category i.e., commercial activity which entails higher tariff rate than LT-5. The provisions of misuse and the procedure to be followed for misuse of electricity is contained in Clause 42.02 of KERC-Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, the same is reproduced here below:

**“42.02 MISUSE OF ELECTRICITY**

(Applicable to both HT and L.T installations)

Amended version vide Notification No. KERC/COS/D/07/10 Dated 1.7.2010 published in Karnataka Gazette dated 22.7.2010

- (a) If at any time, the energy supplied under one method of charging is misused for purpose for which a higher method of charging is in force, the Assessing Officer shall assess the quantum of energy and difference in fixed charges for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of 12 months immediately preceding the date of inspection and charge at two times the Tariff applicable to the purpose for which the energy is misused”.
- (b) The provisions of Clause 42.06 (e) of KERC-Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka is reproduced here below:

“In case of prejudicial use/theft of Electricity under Clauses 42.01, 42.02 and 42.06 above, the Assessing Officer/Authorized Officer shall draw mahazar at the time of inspection when such prejudicial use/Theft of Electricity is detected. The mahazar shall be drawn in the presence of the Consumer or his representative along with two other witnesses who shall sign the mahazar report. One copy of such report shall be handed over under acknowledgement of the Consumer or his representative.”

(c) The provisions of Clause 42.07 (1) of KERC-Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, is reproduced here below:

“The Assessing Officer shall serve the order of provisional assessment within 7 days from the date of inspection upon the person in occupation or possession or in charge of the place or premises with a 15 days’ notice”. The Provision further explains the procedure involved.

7. On perusal of the records submitted before this Authority, it is evident that

(a) No mahazar was drawn by the Assessing Officer/Authorised Officer when prejudicial use/theft of electricity was detected, on 03-04-2017. Clause 42.06(e) of KERC-Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka requires that mahazar shall be drawn in the presence of the consumer or his representative along with two other witnesses who shall sign the mahazar report; one copy of such report shall be handed over under acknowledgement to the consumer or his representative. In the present case no such action was taken by the Assessing Officer/Authorised officer.

(b) Clause 42.07(1) of KERC Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka requires that the Assessing Officer shall serve the order of provisional assessment within 7 days from the date of inspection upon the person in occupation or possession or in charge of the place or premises with a 15 days’ notice. In the present case the Assessing

Officer has issued provisional assessment order after a lapse of 1 year 8 months 21 days after the date of inspection.

(c) It is the contention of the Respondent-2/AEE that copy of the rating report, 30 days notice and 7 days notice were delivered by hand to the person residing at the consumer's address. However, the Appellant/Complainant denies receiving any of the above three notices. His claim is that the acknowledgement signature on copy of the three notices is not that of any of his employees. The Appellant/Complainant further goes on to say that he came to know of these three letters of different dates only after he visited the office of the Respondent-2/AEE on 24.12.2018 when power supply to his installation was disconnected. A little forethought and systematic following of the procedure involved would have strengthened the case of the Respondent-2/AEE. It is the claim of the Respondent-2/AEE that the LT-5 power connection given for manufacturing of bricks was misused for water service station which comes under LT-3 and carries a higher rate of tariff. This claim of the Respondent-2/AEE is not supported by any evidence. The Respondent-2/AEE would have got the entire action of digging the land for finding the pipeline, the existence of the pipeline hidden under the ground, the service of notice to the person who was present at the time of inspection videographed, if not through a professional videographer atleast through a mobile phone. The name, designation and relationship of the person who received the three notices, with the Appellant/Complainant has also not been recorded.

8. The above lapses on the part of the Respondent-2/AEE make his case weak. The Respondent-2/AEE has not been able to prove the case of misuse/theft of electricity against the Appellant/Complainant. The charges of misuse/theft of electricity are based on presumption that power carrying lower tariff has been utilised for a purpose which carries a higher tariff. Hence I come to the

conclusion that Respondent-2/AEE has not been able to prove that the Appellant/Complainant has unauthorisidly used electricity for a purpose other than for which the usage of electricity was authorised.

9. It is the claim of the Appellant/Complainant that the water service station is having a separate RR No.P-3488. This is not refuted by the Repondent-2/AEE, When there is a separate installation for the use of water service station which comes under LT-3 category, the question of drawing water from LT-5 connection of RR 4218 carrying a lower tariff rate does not arise at all.

10. In view of the foregoing paras, I proceed to pass the following order.

No. OMB/B/G-338/2019/D-1358

Dated: 17.09.2019

### ORDER

- 1) The appeal filed by the Appellant/Complainant is allowed.
- 2) The impugned letter of the CGRF, Chitradurga, BESCOM bearing No.CE (E)/CZ/SEE/(E)/(O)/AEE-1/19-20/1297-99 dated 4.5.2019 is set aside.
- 3) The report of Chitradurga LT Rating sub-division BESCOM dated 03.04.2017 is also set aside.

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

1) Sri Manohar S/o Rangaiah,  
Brick Manufacturing Unit,  
Industrial Area, P.B Road,  
Chitradurga.

2) Sri S.Umapathy,  
# 3700, Shri Karisiddeshwara Krupa,  
M.C.C 'A' Block,  
Davanagere-577004.

- 3) Consumer Grievance Redressal Forum,  
Chitradurga District, BESCO,  
Chitradurga.
- 4) The Assistant Executive Engineer (Electrical),  
O & M Sub-Division, BESCO,  
Chitradurga.
- 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.