

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-362/2019

Dated 17/12/2019

In the matter of

M/s. Ashraya Udyog Seva Samithi,
#47/1, Model House Street,
Basavanagudi,
Bengaluru – 560004.

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),
O & M W-2 Sub-Division, BESCOM,
Chamrajpete, Sirsi Circle,
Mysore Road,
Bengaluru-560018.

2) Chairman, 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. Ashraya Udyog Seva Samithi, (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 45/2017-18/05-03-2018/1727-31 dated 20-07-2019 of CGRF, Bengaluru Urban District, by inter-alia seeking the following reliefs:
 - i. Allow the appeal with costs.
 - ii. Quash the inspection report filed by the Assistant Executive Engineer, Elecl, BESCOM, Vigilance.
 - iii. Quash the speaking order passed by Respondent No.2 dated 26-02-2018.
 - iv. Quash the order of the Consumer Grievance Redressal Forum dated 20-07-2019.
 - v. Grant costs.

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

The Appellant/Complainant M/s. Ashraya Udyog Seva Samithi is a charitable institute rendering charitable and social activities. The Income Tax Department in recognition of the charitable and social activities of M/s. Ashraya Udyog Seva Samithi has by its order dated 17-04-2012 granted a certificate under Section-12(A) of Income Tax Act, 1961 showing therein its head quarters at 47/1 Model House Street, Basavanagudi, Bengaluru-560004. The Appellant/Complainant in the course of its social activity had setup an accommodation to working women at 33/1, "Meghalaya", Sannidhi Street, Basavanagudi, Bengaluru-560004, wherein three Nos. of domestic installations bearing RR No. W2EH-2812, W2EH-9434 and W2P-1540 under

LT-2(A) have been provided. This facility is suitably displayed on the compound wall and the authorities have taken cognizance of the same and billed the installation under domestic tariff rates. The installation was visited by the Meter Testing staff during May 2013 and raised objections with regard to the tariff applied and proceeded to back bill the installation from domestic tariff rates to that of commercial tariff. On filing of objections and production of the certificate under S-12(A) of the Income Tax Act, the Assistant Executive Engineer (Ele) and Assessing Officer of W2 Sub Division passed an order dated 03-09-2013 setting aside the back bill as being unwarranted. The premises was once again visited by AEE (Ele) Vigilance on 15-05-2017 who proceeded to frame his charge of “misuse” of electricity. He has filed a mahajar and an undertaking without carrying any signature of any inmates or representatives there at. He has in his report drawn at his behest proceeded to mention that the premises is in use by Ashraya Udyog Samithi. He makes a remark on the created document “Verified OK, BBC may be claimed for 3 years” and himself signed the document. The Respondent-1/AEE in pursuance of the inspection report back billed the installations as here under: -

1. RR No. W2P1540 Rs. 8,45,991/-
2. RR No. W2EH 2812 Rs. 2,64,816/-
3. RR No. W2EH 9434 Rs. 3,59,697/-

The Respondent-1/AEE has deliberately increased the connected load and violating the provisions inflated the back bill beyond all the proportions with ill motivations. Although objections were filed before the Respondent-1/AEE questioning the correctness of the inspection and failure on the part of the Assessing Officer incorrectly evaluating

the charge, by a speaking order dated 29-07-2017 the Respondent-1/AEE confirmed the back billed amount. Aggrieved by the order of the Respondent-1/AEE the Appellant/Complainant filed a complaint before the CGRF Bengaluru Urban District. After due hearing the CGRF passed an order dated 31-01-2018 remitting the complaint to the Respondent-1/AEE to pass an appropriate final order by considering the Appellant/Complainant's objections by conducting personal hearing within a period of 4 weeks. The Respondent-1/AEE accordingly conducted a personal hearing and in a most arbitrary exercise of power passed his order dated confirming the back bill. Challenging the order of the Respondent-1/AEE, the Appellant/Complainant filed a complaint before the CGRF on 05-03-2018. The CGRF Bengaluru Urban District in their order dated 20-07-2019 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 CGRF has no jurisdiction to hear the matter as per KERC (CGRF and Ombudsman) Regulations 2004 and one member partly allowing the complaint, quashing the inspection carried on 15-05-2017 by the AEE Vigilance and also the order of the Respondent-1/AEE dated 26-02-2018. 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-362/2019/D-1345 dated 13-08-2019, 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 28-08-2019.

However, they have not availed the benefit of the said provision. The case was listed for hearing on 28-08-2019, 12-09-2019, 18-09-2019 and 26-09-2019.

- 4) The Respondent-1/AEE has filed his parawise replies dated 23-08-2019 which is received in this office on 26-08-2019. He has stated that in the letter from Income Tax Department dated 17-04-2012 which is issued in the name of M/s. Ashraya Udyog Seva Samithi, address mentioned is 47/1, Model House Street, Basavanagudi, Bengaluru-560004. But consumer has not provided any exemption letter from Income Tax Department to No. 19/33, Sannidhi Road, Basavanagudi, Bengaluru. Whereas it is clearly mentioned in Income Tax Department letter dated 17-04-2012 in point No. 7 that “It is advised that the institution/Found prominently displays its name and address, and 80G recognition certificate number at the place where its charitable activities are carried on. If there is any change in address, the same should be intimated to the under signed as well as to the Assessing Officer.” The installations were inspected by AGM, BESCOM Vigilance, Jayanagar, Bengaluru and noticed misuse of tariff using power for Ladies Paying Guest accommodation and one meter with RR No. W2P1540 was not recording. Mahajar has been drawn by AGM, BESCOM Vigilance and signatures of the employees working at the premises has been recorded. Meanwhile consumer has submitted application along with all necessary documents for change of tariff from domestic to commercial and submitted agreement and indemnity bond. Tariff has been changed for RR Nos. W2P1540, W2EH-2812 and W2EH-9434 on 06-03-2018 and consumer is paying monthly

electricity bill other than the disputed amount at commercial rate since then. The submission of the Respondent-1/AEE is as follows: -

- a. Exemption letter from Income Tax Department is pertaining to No. 47/1, Model House Street, Basavangudi , Bengaluru-560004 and not for No. 19/33, Sannidhi Road, Basavangudi, where PG is presently running.
 - b. Tariff changed from LT-2 to LT-3 on 06-03-2018 at the request of the consumer.
 - c. The back billing charges claimed for Rs. 14,70,564/- (in respect of RR Nos. W2P1540, W2EH-2812 and W2EH-9434) is correct and is in order. Hence requested to consider the matter in this regard in the interest of Company's revenue.
- 5) The Appellant/Complainant has filed a rejoinder to the parawise replies dated 23-08-2019 filed by the Respodent-1/AEE, wherein he has stated that once an issue his resolved by the Sub Divisional Officer of a O & M unit of the Licensee by exercising his powers vested in him as an Assessing Officer by virtue of the provision of Section 126 (3) of Electricity Act, it is not open to a subsequent inspection or order unless the earlier order is set aside by a competent authority and also the exemption granted to a charitable institute under Section 12(A) of the Income Tax Act shall be in consideration of its activities and such activities are not to be confined to its official address and its sway shall be beyond the precincts of its official address. The exemption granted under Section 12(A) of the Income Tax Act shall be inconsideration of its philanthropical activities and addressed to its administrative office address. There being no condition that the activity should be restricted to its administrative address and that the activity if extended to seek

exemption to each of its branch of activity. The report made out by the official was without the signature by any representative and witness both on the inspection report or mahajar. The Respondent-1/AEE deliberately inflated the BBC in respect of RR No. W2P1540 a water pump whose meter was allegedly found MNR on the basis of an imaginary average consumption amounting to Rs. 8,45,991/-. The Respondent-1/AEE inspite of requests to call the inspecting officer from the vigilance to depose and examine, failed to call him during the hearings. His orders passed suffers with lack of application of mind and have failed to pass a reasonable order inspite of directions to that effect. Regarding the Appellant/Complainant changing the tariff from LT-2 to LT-3 on 06-03-2018, the Appellant/Complainant has said that the hapless Appellant/Complainant was forced to avail commercial tariff under coercion by Respondent-1/AEE. The Appellant/Complainant reserves right to claim back the excess payment made once the issue is resolved. The subject premises was subjected to an inspection by the staff of Meter Testing Sub Division of the Licensee on 12-05-2013, questioning the application of tariff LT-2(A) to this working women hostel maintained by this institute. It was back billed by the Respondent office. The Appellant/Complainant filed before the Sub Divisional Officer, objections drawing his attention to the fact that the facility is maintained by the institute which has been granted exemption under Section 12(A) of the Income Tax Act. The Sub Divisional Officer after affording a hearing under Section 126(3) of the Electricity Act by exercising his powers in the capacity of Assessing Officer set aside the back bill and restored the tariff schedule LT-2(A) to the installations. This order continues to be in force and applicable to the installations so

long as the conditions prevail. The subsequent contrived inspection by the AEE, Vigilance is to be treated as bad in law. The Respondent-1/AEE has extended a frivolous ground to deny the application of the exemption under Section 12(A) to the premises at Sannidhi Road, that the address mentioned in the certificate granted under Section 12(A) is the official office address of the institute and for this reason they express their reluctance to apply the tariff to the facility provided by the institute to the working women at the said address. This contention is absurd and illogical. The concession under Section 12(A) is extended to the institute who are allowed to extend their philanthropic acts and authorized to put up facilities, the only requirement being that a board with details are put up at that facility. This was on the premises and the same was recorded by the inspecting officer. The Respondents knowingly and inspite of providing them with orders passed earlier by the CGRF in similar cases have proceeded to deny justice to the Appellant/Complainant.

6) The Appellant/Complainant in his memo dated 12-09-2019 has submitted a copy of the “Speaking Order” passed by the Assessing Officer, W2 Sub Division on the subject dated 03-09-2013 and the inspection report excluding mahajar and the under taking which were denied to him under the RTI Act.

7) The Respondent-1/AEE at the time of hearing the case on 18-09-2019 has further made the following submissions: -

The exemption granted under the Income Tax Department is for the year 2012 and consumer has failed to produce latest exemption granted certificate for the places where its activities are going on or for its official address. The Appellant/Complainant has submitted the Income

Tax exemption letter for the address #47/1 Model House Street, Basavanagudi, Bengaluru dated 17-04-2012, whereas it is clearly mentioned in the IT exemption letter that the institution prominently displays its name and address and 80G recognition certificate number at the place where its charitable activities are carried on. The Appellant/Complainant has neither displayed the address nor the 80G recognition certificate number at No. 19/33, Sannidhi Road, Bansavanagudi, Bengaluru. If the exemptions granted by the Income Tax Department shall be in consideration of its activities and not address, here the main issue is that the Respondent has questioned the commercial activities going on in the premises as the inspecting officers from the vigilance have reported and drawn mahajar that complete commercial activities are taking place at the said premises. The Inspecting Officer and the Assessing Officer from the BESCO may visit any consumer's place at any time for inspection and draw mahajar and not wait for anyone. The allegation by the Appellant/Complainant that inspite of requests to call the Inspecting Officer from the vigilance to depose and examine fail to call him during the hearings is a complete false statement. The Inspecting Officer Mr. Asif Ulla Khan was present at the time of hearing and is presence and also his statement is recorded in our register along with signature. The consumer agreed that the premises is being used for commercial activities and also applied for change of tariff from domestic to commercial. It is very ridiculous to say that the Appellant/Complainant was forced to avail commercial tariff by the Respondent-1/AEE. The Appellant/Complainant is in knowledge of running a firm/business/institute and is not any illiterate to make decisions on force or by someone else will.

8) Perused the appeal memo, parawise replies and submissions made by the Respondent-1/AEE and also the rejoinder and further submissions made by the Appellant/Complainant to the parawise replies and all the documents submitted by both the contesting parties to this appeal/complaint. The Appellant/Complainant is a charitable institute in the field of social services to the society. The said organization has been granted approval on 17-04-2012 under Section 80G(5)(vi) of the Income Tax Act 1961 and registered under Section 12(A) of the Income Tax Act 1961. The address mentioned in the approval letter is No. 41/1, Model House Street, Basavanagudi, Bengaluru-560004. The letter also further says that approval is granted for the period from the assessment year 2012-13 onwards. The Appellant/Complainant has also submitted a certificate issued by the Income Tax Officer (TDS) ward 16(1) Bengaluru stating that M/s. Ashraya Udyog Seva Samithi which is a charitable institution registered under Section 12(A) and granted recognition under Section 80G of the IT Act is carrying on its activities at the address No. 33/1, Meghalaya, Sannidhi Road, Basavanagudi, Bengaluru-560004. With these documents the arguments of the Respondent-1/AEE that the exemption granted under the Income Tax Act is for the year 2012 and consumer has failed to produce latest exemption granted certificate for the places where its activities are going on or for its official address does not hold ground. The certificate granted on 17-04-2012 clearly states that approval is granted for the period from the assessment year 2012-13 onwards. There is no expiry date or period mentioned in the certificate which means to say that it holds good even for the period when all the activities of inspection by AGM, BESCOM Vigilance, passing of final BBC order by the

Respondent-1/AEE, passing of order by the CGRF dated 20-07-2019 took place. The second certificate submitted by the Appellant/Complainant issued by the Income Tax Department saying that M/s. Ashraya Udyog Seva Samithi is carrying on its activities at the address 33/1, Meghalaya, Sannidhi Road, Basavanagudi, Bengaluru-560004, which is the place where Appellant/Complainant is running their PG accommodation for working women is going on. For the purpose of running the PG accommodation to working women the Appellant/Complainant has availed three Nos of electrical domestic installations bearing Nos. W2P1540, W2EH-2812 and W2EH-9434 under LT2(A) Tariff. The Appellant/Complainant has stated that this facility is suitably displayed on the compound wall and the authorities have taken cognizance of the same and billed the installation under domestic tariff rates. The inspecting officer of BESCOM Vigilance who visited the PG accommodation run by the Appellant/Complainant on 15-05-2017 recorded that there has been a misuse of electricity by the Appellant/Complainant for running ladies paying guest accommodation. Based on the report of the inspecting officer of BESCOM Vigilance, the Respondent-1/AEE issued notice to the Appellant/Complainant to pay back bill charges of Rs. 14,70,564/- for the three electrical meters installed in the premises of the Appellant/Complainant. After hearing the objections filed by the Appellant/Complainant, Respondent-1/AEE passed a final speaking order dated 26-02-2018 confirming the back billing charges imposed on the Appellant/ Complainant. The Appellant/Complainant aggrieved by the order of the Respondent-1/AEE has challenged the same before the CGRF Bengaluru Urban District. The CGRF Bengaluru Urban

District in their order dated 20-07-2019 by a majority of 2:1 dismissed the complaint. It is seen from the records submitted by the Appellant/Complainant that on an earlier occasion also these subject installations were targeted for alleged misuse of tariff pursuant to an inspection by Meter Testing Staff on 16-05-2013 and they were back billed for alleged misuse. After hearing the objections filed by the Appellant/Complainant that they are covered under the exemption granted to them under Section 12(A) of the Income Tax Act, the then Assessing Officer of W2 Sub Division by an order dated 03-09-2013 set aside the back bill. As regard to the contention of the Appellant/Complainant that they were forced to avail commercial tariff under coercion by Respondent-1/AEE is negated by the Respondent-1/AEE stating that the consumer has agreed that the premises is being used for commercial activities and also applied for change of tariff from domestic to commercial and it is very ridiculous to say that he was forced to avail commercial tariff. The Respondent-1/AEE in support of his argument has not submitted any documents such as application from the Appellant/Complainant for change of tariff etc. Hence this argument of the Respondent-1/AEE has not been considered.

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

No. OMB/B/G-362/2019/D-1406

Dated 17-12-2019

O R D E R

1. The Appeal/Complaint is allowed.
2. The order of CGRF No. CGRF 45/2017-18/05-03-2018/1727-31 dated 20-07-2019 is here by set aside.

3. The final order passed by Respondent-1/AEE date 26-02-2018 is also set aside.

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

- 1) M/s. Ashraya Udyog Seva Samithi,
#47/1, Model House Street,
Basavanagudi,
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- 2) Shri M.A Delvi,
Advocate,
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- 3) The Assistant Executive Engineer (Elec),
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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.