

BEFORE THE ELECTRICITY OMBUDSMAN

No.16 C-1, Miller Tank Bed Area (Behind Jain Hospital)
Vasanthanagar, Bengaluru-560052.

Present: **B.V. Patil,**
Prl. District Judge (Retd)
Electricity Ombudsman,
Case No. OMB/M/G-397/2020
Dated 22/07/2020

In the matter of

Lord Bishaph,
J.P.A Father Maxim Rozaria,
Wazz Home,
Nandigudda Circle Jeppu,
Kankanadi Village,
Mangaluru District.

Represented by:

Sri Basil S Rodrigues,
Sirla Padpu,
Kulshekar Post,
Mangaluru Taluk,
Dakshina Kannada – 575005.

- Appellant

Vs

- 1) The Assistant Executive Engineer (Electrical),
O & M Attavara Sub-Division, MESCOM,
Attavara,
Managaluru - 575001.

Chairman, Consumer Grievance Redressal Forum/(CGRF)
Superintending Engineer (Electrical)
O & M Circle, MESCOM,
Attavar, P.B.No. 240,
Mangalore - 575001.

- Respondents

- 1) This Appeal/Representation preferred before this authority by
Lord Bishaph through his G.P.A holder Father Maxim Rozaria
questioning the legality of the order passed by the Consumer

Grievance Redressal Forum Dakshina Kannada District, (herein after referred as CGRF), bearing No. ಮವಿಸಕಂ/ಗ್ರಾ.ಕು.ಕೊ.ನಿ.ವೇ./19-20/ಮ-4/ದಕ-6/14461-465, dated 29-02-2020 under the provisions of Clause 21.2 of KERC Regulations 2004. The Appellant/Complainant submitted his appeal memo on 11.03.2020. The CGRF passed an order on 29.02.2020, the appeal was registered in this office on 20.03.2020, hence the appeal is in time.

- 2) The brief facts of the case are that the Appellant Lord Bishaph obtained a permission from the Mangaluru Mahanagara Palike dated 03.02.2017 for the construction of hostel building near Nandigudda Circle, Jappu, Mangaluru. On the request of the Appellant, Respondent No. 1 passed a power sanction order on 09.01.2017 sanctioning the power to the hostel, intimating its terms and conditions for servicing the installation. After completion of the construction, the official of the Respondent inspected the building and categorized the installation as a commercial building and fixed the Tariff to the installation under HT 2 (b) through its number HT314.
- 3) It is submitted that the hostel was constructed for the purpose of housing retired Parish Priests (ಧರ್ಮ ಗುರುಗಳು) the Appellant is

looking after the well-being of the Priests, who are spending their retired life. The said building is being used for the residence of Priests, for their prayers and other allied activities. The power supply given to the said building was utilized by the Appellant for domestic purpose. However the Respondent without examining as to which purpose the electrical installation is being used by the Appellant wrongly classified the installation as a private hostel treating the same as a commercial use, fixed the Tariff under HT 2 (b) illegally instead of fixing the Tariff under HT 4. When the Petitioner came to know about the erroneous classification of the installation by the Respondent, on 12.07.2019 submitted a representation to Assistant Executive Engineer (Ele.) MESCOM, Attavara, Mangaluru for changing the classification of the installation from HT 2 (b) to HT 4. Second application was came to be filed on 31.07.2019. The Respondent after receiving the inspection reports from the Assistant Executive Engineer (Ele.) rejected the request of the Appellant and held that the classification and fixation of the Tariff to the hostel of the Appellant under category HT 2 (b) is proper and correct.

- 4) Appellant having dissatisfied with the decision of the Assistant Executive Engineer, approached the Consumer Grievance Redressal Forum, Mangaluru by filing a complaint. CGRF on

hearing the both parties, examining of the records produced, referring to KERC Regulations 39.1 rejected the complaint filed by the Appellant. Appellant questioning the legality of the order passed by the CGRF filed the present appeal contending that;

- a) The order passed by the CGRF, Mangaluru is illegal and incorrect, the same is an outcome of non-application of mind.
- b) CGRF has failed to take into consideration that the premises in question is being used by the Appellant for the purpose of residence of retired Parish Priests, who are senior citizens, the building consists of rooms, prayer hall, kitchen, Doctor's room, office, library and conference hall, no commercial activities are under taken in the premises in question by the Appellant. The CGRF failed to taken into consideration the fact that the premises in question is being used by the Appellant for domestic purpose failed to reclassify or change the classification of Tariff category from HT 2 (b) to HT 4.
- c) CGRF failed to take into consideration the reports submitted by the Assistant Executive Engineer and other officers of the Respondent, erred in rejecting the complaint.
- d) CGRF failed to take into consideration the classification of the installations under HT 4 Tariff category wherein Temple, Churches, Mosques, Gurudwaras, Ashrams, Mutts and

religious/charitable institutions using power for religious activities have been classified and assessed with Tariff. The premises in question is being run by the Appellant who is a religious institution, therefore, the Respondent incorrectly classified the Tariff Category to the building in question under HT 2 (b).

- e) CGRF failed to take into consideration that the Appellant is using the electricity for domestic purpose and not for commercial purpose, failed to classify the same under HT 4.
 - f) CGRF failed to take into consideration regulation 3.4 of Conditions of supply of Electricity of the Distribution Licensees in the State erred in dismissing the complaint. The order passed by the CGRF is perverse, illegal needs to be interfered by this authority, prayed for allowing the appeal.
- 5) After registering the appeal, notice was issued to both parties which was duly served. It was informed to both parties through the letter dated 16.06.2020 of this office in respect of the availability of Sub-Regulation 1 of Regulation 20 of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulation 2004, for settlement through Conciliation and Mediation, to appear before this authority on 09.07.2020. However, the parties did not avail the benefit of the said provision, the matter was not settled either

through mediation or conciliation. Accordingly, the case was taken up for hearing.

- 6) On 27.05.2020 the Assistant Executive Engineer (Ele.) (Respondent No. 1) sent his parawise replies / comments through post which was received by this office on 02.06.2020. In parawise remarks it was submitted by the Respondent No. 1 that on 28.04.2017 the Respondent No. 1 passed a power sanction order in favour of the Appellant under Tariff category HT 2C (1) as the Appellant obtained a permission from the Mangaluru Mahanagara Palike for construction of a hostel. On inspection, the Respondent No. 1 found that the hostel said to have been constructed was not attached to any educational institution, the installation was classified under Tariff category HT 2 (b) numbering it as HT 314. On 12.07.2019 the Appellant submitted an application for reclassifying the installation for the purpose of Tariff category from HT 2 (b) to HT 4. On inspection by the Respondent No. 1 they found that the power was consumed for the purpose of hostel, the power was used for housing retired Parish Priests, rightly classified the installation under HT 2 (b) the same was communicated to the Appellant. The Appellant filed a complaint before the CGRF prayed for changing the classification of the Tariff Category contending that the Appellant is consuming the

power for housing the retired Parish Priests which is a domestic purpose, the Appellant is not using the power for any commercial activity in the premises in question. The Appellant is running a private hostel in the premises for housing the Parish Priests, the said hostel is not attached to any educational institutions of the Appellant such is the case the installation of the appellant was rightly classified under Tariff category HT 2 (b), the same cannot be classified under HT 4 as prayed by the Appellant. On taking into consideration the various categories under Tariff schedule HT 1 to HT 4, the premises in question being used as a private hostel which was not at all included in Tariff schedule HT 1 to HT 4, on taking into consideration the nature of the use of the building, the CGRF rightly dismissed the complaint filed by the Appellant. The order passed by the CGRF Managaluru does not suffers from any material irregularities, the same is not perverse and prayed for dismissal of appeal.

- 7) On 09.07.2020 the Authorized representative of the Appellant Sri Basil S Rodrigues was present along with the authorization of the Appellant, submitted his arguments and produced 2 documents including the authorization. The Respondent No. 1 sent his written arguments through E-mail along with copy of the building construction permission issued by the Mangaluru Mahanagara

Palike and telephoned that his written arguments may be treated as his arguments.

- 8) Heard the arguments.
- 9) On the above contentions the points that arise for consideration of this authority is;

- a. Whether the order bearing No. ಮವಿಸಕಂ/ಗ್ರಾ.ಕು.ಕೊ.ನಿ.

ವೇ./19-20/ಮ-4/ದಕ-6/14461-465, dated 29-02-2020

passed by the CGRF Dakshina Kannada rejecting the complaint of the Appellant is illegal, perverse, liable to be interfered by this authority?

- 10) My answers to the above point is in the;

- a. Negative.

For the following,

REASONS

- 11) I perused the appeal memo, the records produced along with the appeal including the order passed by the CGRF Dakshina Kannada.
- 12) Before considering the case of the Appellant I would like to refer some of the admitted facts in this case. It is not in dispute that the Appellant obtained permission to construct a private hostel building in survey number 728/P1 (Kaatha No. 2637) at Jappina Mogaru village in Managaluru on 05.12.2015. An application was

filed before the Respondent No. 1 seeking power sanction and servicing the installation to the private hostel. The Respondent No. 1 issued a power sanction order on 09.01.2017 sanctioning 100 KVA power to the hostel of the Appellant by imposing certain conditions. It was also informed that after servicing the installation, power consumption charges will be tariffed under HT 2C (i) of Tariff Order. Later, on completion of the building while servicing the installation, the Respondent No. 1 found that the hostel building constructed by the Appellant did not attached to any educational institutions run by the Appellant, treated the installation serviced to the hostel falls under Tariff schedule HT 2 (b), accordingly order was passed directing the Appellant to pay the electricity consumption charges under Tariff Schedule HT 2 (b) by assigning meter No. HT314.

- 13) It is submitted by the authorized representative of the Appellant that the installation serviced to the hostel managed by the Appellant is occupied by retired Parish Priests, wherein rooms, kitchen, car parking, prayer hall, library and doctor's room, dining hall have been constructed and used by the Parish Priests who are senior citizens. The Appellant is looking after their well-being during their old age, the power consumption used by the Appellant being domestic purpose, no commercial activities are under taken

in the premises in question therefore, the Respondent has failed to classify the installation under Tariff category HT 4, wrongly classified under the Tariff category HT 2 (b) treating the same as commercial use which is incorrect and improper. It was also submitted that under Regulation 3.3 and 3.4 of Conditions of Supply of Electricity of Distributions Licensees in the State, the Respondent No. 1 is empowered to reclassify the Tariff category in case the same was erroneously classified by him. However, in this case neither the Respondent nor CGRF failed to exercise their power in respect of reclassification of the tariff category, sought for reclassification of the same.

- 14) Before considering the submission of the Appellant I would like to refer Regulation 3.3 and 3.4 of above said Regulations.

“3.03 CLASSIFICATION OF CONSUMERS FOR THE PURPOSE OF TARIFF CATEGORIES

Licensee may classify or reclassify a Consumer into various Tariff categories from time to time as may be approved by the Commission. No additional category other than those approved by the Commission shall be created by the Licensee.

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 taken 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.***

- 15) At the outset I would like to refer Section 62 to 64 of the Karnataka Electricity Act 2003 which deals with the determination of Tariff and procedure for passing Tariff Order.

62. Determination of tariff. – (1) *The Appropriate commission shall determine the tariff in accordance with the provisions of this Act for. -*

- (a) *supply of electricity by a generating company to a distribution licensee:*

Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purpose of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

- (b) *transmission of electricity;*

- (c) *wheeling of electricity;*

- (d) *retail sale of electricity;*

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

(2) *The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.*

(3) *The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.*

(4) *No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.*

(5) *The Commission may require a licensee or a generating company to comply with such procedure as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover.*

(6) *If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.*

63. Determination of tariff by bidding process. – *Notwithstanding anything contained in Section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.*

64. Procedure for tariff order. – (1) *An application for determination of tariff under Section 62 shall be made by a generating company or licensee in such matter and accompanied by such fee, as may be determined by regulations.*

(2) *Every applicant shall publish the application, in such abridged form and manner, as may be specified by the Appropriate Commission.*

(3) *The Appropriate Commission shall, within one hundred and twenty days from receipt of an application under sub-section (1) and after considering all suggestions and objections received from the public.*

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- (a) *issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order;*
 - (b) *reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act and the rules and regulations made thereunder or the provisions of any other law for the time being in force:*

Provided that an applicant shall be given a reasonable opportunity of being heard before rejecting his application.

(4) *The Appropriate Commission shall, within seven days of making the order, send a copy of the order to the Appropriate Government, the Authority and the concerned licensees and to the person concerned.*

(5) *Notwithstanding anything contained in Part X, the tariff for any inter-state supply, transmission or wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling, be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefor.*

(6) A tariff order shall, unless amended or revoked, continue to be in force for such period as may be specified in the tariff order.

- 16) It is not in dispute that Section 62 to 64 of the Karnataka Electricity Act 2003, deals with determination of Tariff and procedure for passing Tariff Order. On plain reading of Section 62 to 64 of the KE Act makes it clear that the appropriate commission means Karnataka Electricity Commission shall determine the Tariff in accordance with provisions of the KE Act, thereby, it is clear that KERC had exclusive power and jurisdiction to determine the Tariff and classification of various tariff categories from time to time pertaining to the installations in accordance with the provisions of Karnataka Electricity Act 2003. Whether an installation availing power supply falls with a particular tariff category will be decided by the KERC and not the licensee company. The Respondent No.1 had no power or jurisdiction to determine either the Tariff or classification of various Tariff categories. On plain reading of Regulation 3.3 of above said regulations makes it very clear that the Respondent No. 1 being the Licensee may classify or reclassify a consumer into a tariff category which are approved by the KERC. Respondent No. 1 had no power to addition any category other than those approved by the commission. Admittedly the installation serviced by the Respondent No. 1 is a private hostel not attached

to any educational institutions run by the Appellant. The Appellant is using the premises in question as a private hostel housing the retired Parish Priests, who are using the power supply for their domestic purpose. On plain reading of Tariff order passed by the KERC, makes it clear that the private hostels are not indicated under the respective tariff category HT 1 to HT 4. The hostels attached to the educational institutions were included in the Tariff schedule HT 2 (c). The Respondent No. 1 and 2 on examination of the Tariff schedules HT 1 to 4 noticing the fact that the private hostel was not included in the schedules of tariff held that the installation serviced to the premises in question falls within tariff category schedule HT 2 (b). When the Respondent No.1 had no power or jurisdiction to include any premises under a particular Tariff schedule, when the private hostel does not incorporated in tariff schedule HT 1 to HT 4 issued by the KERC, the hostel run by the appellant did not attached to any educational institutions run by the Appellant, the prayer of the appellant was rightly rejected by the Respondent No. 1 and 2.

- 17) It is submitted by the authorized Representative of the Appellant that the installation serviced by the Respondent No. 1 being used by the retired Parish Priest for their domestic purpose, no commercial activities are under taken in the premises in question

as per the report submitted by the Assistant Executive Engineer Attavar Sub Division. The Respondent No. 1 and 2 failed to take into consideration the using of power to the hostel is for domestic purpose and failed to classify the installation under HT 4 category. On perusal of the report dated 08.08.2019 submitted by the Assistant Executive Engineer, Attavar sub division makes it clear that the premises in question to which the power was serviced is a private hostel occupied by the retired Parish Priests for their comfortable stay during their old age, they are using the electricity for their domestic purpose, no commercial activities are undertaken in the premises in question.

- 18) Even for the sake of argument it is taken into consideration that the premises in question is being used as a private hostel for the occupation of the retired Parish Priests, the power supply is being used for domestic purpose and no commercial activities are undertaken in the said premises, the Respondent No. 1 on his own cannot classify or reclassify the installation to Tariff category HT 4 or from HT 2 (b) to HT 4, in view of the fact that the Respondent No. 1 had no power or jurisdiction to classify or reclassify the same without the approval of the KERC. It is an undisputed fact that every year the KERC is under taking the process of revision of the Tariffs and also the classification and reclassification of various

categories of installations. If at all the Appellant intends to get his installation classified or reclassified under appropriate HT Tariff category, he has to make an effective representation before the commission and participate in the hearing process and satisfy before the commission that private hostel using the power for domestic purpose needs to be classified under HT 4 category, and get the private hostel run by the Appellant classified under appropriate tariff category.

- 19) On plain reading of Section 62 to 64 of the KE Act makes it clear that the determination of the appropriate tariff and classification of the various installations vests with exclusive jurisdiction of the KERC. Even under Regulations 3.3 and 3.4 of Conditions of Supply of Electricity of Distribution Licensees in the State makes it clear that the classification or reclassification of various categories of installation of the consumer's needs to be done by the Licensee subject to the approval of the KERC. Therefore, the Licensee Company (Respondent No. 1) had no power or authority regarding the classification or reclassification of the installation of the consumers and fixation of tariffs. The Respondent No. 2 on taking in to consideration relevant provisions of the Karnataka Electricity Act and tariff order issued by the KERC, rightly held that in the absence of categorization of installation of the Appellant

under HT 4, the Respondent No. 1 cannot classify the installation under the above said category rightly rejected the complaint filed by the Appellant. On examination of the records including the appeal memo, this authority is of the considered opinion that the order passed by the Respondent No. 2 does not suffers from any material infirmities, the same is not perverse, needs to be interfered by this authority. Accordingly, the appeal filed by the Appellant is being devoid of merits, is liable to be dismissed.

20) The observations made herein above being confined to the disposal of this appeal, the same does not come in the way for the Appellant to approach the KERC seeking relief for classification of his installation under appropriate tariff category as and when the KERC under takes the process of revision of tariff and classification of tariff categories to various installations. The Appellant is at liberty to make an effective representation before the commission in respect of the premises in question being used by the retired Parish Priests, consuming the power for domestic purpose and seek the classification of his installation under appropriate tariff category.

21) In the result, I proceed to pass the following;

O R D E R

The appeal is dismissed.

Sd/-
(B.V. Patil)
Electricity Ombudsman.

- 1) Lord Bishaph,
J.P.A Father Maxim Rozaria,
Wazz Home,
Nandigudda Circle Jeppu,
Kankanadi Village,
Mangaluru District.
- 2) Sri Basil S Rodrigues,
Sirla Padpu,
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Attavar, P.B.No. 240,
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- 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.