

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/B/G-390/2020
Dated 23/07/2020

In the matter of

M/s. Man Energy Solutions Pvt. Ltd.,
#113/B, Link Road,
Jigani, Anekal Taluk,
Bengaluru District.

Represented by:

Shri C. K. Nandakumar, Advocate,
519-520, Prestige Centre Point,
Level 5, No. 7, Cunningham Road,
Bengaluru – 560052.

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Vs

Appellant

1) The Assistant Executive Engineer (Elec),
O & M Jigani Sub-Division, BESCOM,
Jigani,
Bengaluru District.

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,
3rd Stage, Bhima Jyothi, HSBC Layout,
Next to Chord Road Hospital,
Basaveshwarnagar,
Bengaluru – 560079.

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Respondents

- 1) This Appeal/Representation preferred before this authority by M/s. Man Energy Solutions Pvt. Ltd., (earlier named as M/s. Man Diesel and Turbo India Pvt. Ltd.) questioning the legality of the order passed by the Consumer Grievance Redressal Forum Bengaluru Urban District, BESCOM West Circle, Basaveshwarnagar (herein after referred as CGRF), bearing No. CGRF/49/2019-20/23.10.2019, dated 19-12-2019 under the provisions of Clause 21.2 of KERC Regulations 2004. The Appellant/Complainant submitted their appeal memo on 29.01.2020 after communication of the order passed by the CGRF. The CGRF passed an order on 19.12.2019, the appeal was registered in this office on 30.01.2020, hence the appeal is in time.
- 2) The brief facts of the case are that the Appellant is the owner of an industrial plot No. 113, Bommasandra Jigini link Road, Jigani Village in Anekal Taluk. The installation bearing RR No. AKLHT 393 was serviced by the Respondent No. 1 under HT 2A (i) Tariff category on 19.04.2008. On 25.09.2019 the vigilance wing of the BESCOM Ramanagar inspected the installation of the Appellant and found that the Appellant is misusing the electricity other than the sanctioned purpose, accordingly a case was registered under section 135 of the IE Act in Crime No.106/2019. On the basis of

the report of AEE (Ele.) Vigilance Ramanagar, the AEE (Ele.) Jigani Sub division has provisionally assessed to the best of his judgment the electricity charges payable by the Appellant in respect of the theft/misuse of electricity, issued a demand notice dated 09.10.2019 demanding back billing charges of Rs. 24,15,559/- and compounding charges of Rs. 19,84,000/-. In view of noncompliance of the Provisional Assessment Order, the Respondent No. 1 disconnected the power supply of the Appellant. Challenging the legality of the Provisional Assessment Order passed by the Respondent No. 1 and aggrieved by the disconnection of the power supply to the installation, the Appellant filed a complaint on 23.10.2019 before the CGRF Bengaluru Urban District. CGRF after hearing both the parties, on examining the records rejected the complaint filed by the Appellant.

- 3) The Appellant questioning the legality of the order passed by the CGRF filed the present appeal contending that;
 - a) The order passed by the CGRF, Bengaluru is illegal and incorrect, the same is an outcome of non-application of mind.
 - b) CGRF has failed to take into consideration that the BESCOM Vigilance team erroneously jumped to a conclusion that the complainant has misused the electricity connection for

commercial purpose without establishing any production unit in the remaining plot area which was leased to another entity namely M/s. Renk Gears Pvt. Ltd.

- c) The CGRF failed to take into consideration that the demand notice dated 09.10.2019 issued by the Respondent No. 1 is hit by principles of natural justice.
- d) CGRF failed to take into consideration that the Assistant Executive Engineer (Ele.) BESCOM admitted before the Ombudsman that there was no theft committed by the Appellant.
- e) The order passed by the CGRF dismissing the complaint and directing the Appellant to approach the special court is illegal and incorrect.
- f) Accordingly, the Appellant contended that there is a constant threat of disconnection, in view of erroneous passing of Provisional Assessment Order by the Respondent No. 1, therefore, prayed for quashing the order passed by the CGRF dated 19.12.2019, prayed this authority to direct the BESCOM to consider the objections of the complaint filed against the demand notice dated 09.10.2019, sought for direction to the BESCOM not to disconnect the power supply to RR No.

AKLHT 393, HT 2 (a) serviced to the Appellant by allowing the appeal.

- 4) After registering the appeal, notice was issued to both the parties which was duly served. It was informed to both the parties through letter dated 02.03.2020 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 17.03.2020. However, the parties did not availed the benefit of the said provision, the matter was not settled either through mediation or conciliation. Accordingly, the case was taken up for hearing.
- 5) On 10.07.2020 the advocate for the Appellant Miss Varsha H and the official of the Respondent No. 1 AEE (Ele.) BESCO Jigini were present.
- 6) Heard the arguments.
- 7) After concluding the arguments, advocate for the Appellant though undertakes to produce additional records on behalf of the Appellant in the office, till today she did not produced any documents.
- 8) On the above contentions the point that arise for consideration of this authority is;

- a. Whether the order bearing No. CGRF/49/2019-20/23.10.2019, dated 19-12-2019 passed by the CGRF Bengaluru Urban District, rejecting the complaint of the Appellant is illegal, perverse, liable to be interfered by this authority?
- 9) My answers to the above point is in the;
- a. Negative.

For the following,

REASONS

- 10) I perused the appeal memo, the records produced along with the appeal including the order passed by the CGRF Bengaluru Urban District.
- 11) Before adverting with the contentions raised by the Appellant, I would like to refer some of the undisputed facts in this case.
- 12) It is not in dispute that the Appellant was the owner of an industrial plot No. 113 Bommasandra Jigani link Road, Jigani village in Anekal Taluk, the installation bearing RR No. AKLHT 393 was serviced by the Respondent No. 1 under HT 2A (i) Tariff category on 19.04.2008. On 25.09.2019 the Vigilance wing of the BESCOM Ramanagar inspected the installation of the Appellant and found that the Appellant is misusing the electricity other than the

sanctioned purpose, accordingly a case was registered under section 135 of the IE Act in Crime No.106/2019. On the basis of the report of AEE (Ele.) Vigilance Ramanagar, the Respondent No. 1 has provisionally assessed to the best of his judgment the electricity charges payable by the Appellant in respect of the theft/misuse of electricity. The Respondent No. 1 issued a demand notice dated 09.10.2019 demanding back billing charges of Rs. 24,15,559/- and compounding charges of Rs. 19,84,000/-. In view of non-compliance of the Provisional Assessment Order, the Respondent No. 1 disconnected the power supply of the Appellant.

- 13) The crucial question that has to be examined in this case is as to whether the CGRF had a jurisdiction to deal with offences of theft/misuse of the electricity alleged to have been committed by the consumer, whether CGRF can deal with the issue of legality of the Provisional Assessment Order passed by the Respondent No. 1.
- 14) While examining this question, I would like to refer Regulation 2 (g) of KERC (CGRF & Ombudsman) Regulations 2004, deals with definitions, which reads as under:

(g) 'Complaint' means any grievance made by a consumer with regard to supply of electricity by the licensee, provided that grievance falling within the purview of any of the following provisions of the

Act are excluded from the jurisdiction of the Forum:

(1) unauthorized use of electricity as provided under section 126 of the Act

(2) offences and penalties as provided under section 135 and 139 of the Act

(3) accident in the distribution, supply or use of electricity as provided under section 161 of the Act.

- 15) On plain reading of the definition 2 (g) referred supra makes it clear that any grievance with regard to supply of electricity by the Licensee to a consumer can be filed through a complaint before the CGRF, however the grievance falling within the perview of unauthorized use of electricity as contemplated under section 126 of IE Act, offences and penalties provided under section 135 to 139 of the IE Act including accident in the distribution, supply or use of electricity as provided under section 161 of the Act have been expressly excluded from the jurisdiction of the CGRF.
- 16) On plain reading of the grounds of appeal makes it clear that on 20.05.2019 the AEE (Ele.) Vigilance Ramanagar conducted the inspection pertaining to the installation of the Appellant, found the theft/misuse of the electricity, accordingly a criminal case was registered in Crime No. 106/2009 for the offences punishable under section 135 of IE Act. The records produced in this case

discloses that the AEE (Ele.) Jigani passed a Provisional Assessment Order assessing the back-billing charges of Rs. 24,15,559/- and compounding charges of Rs. 19,84,000/-. The Appellant alleged to have committed theft by dishonest abstraction of electricity, the Appellant being the consumer against whom the Provisional Assessment Order was passed demanding back billing charges and compounding charges, when the Appellant failed to comply with the Provision Assessment Order, the Respondent No. 1 company is entitled to disconnect the installation without notice. If the Appellant is aggrieved by the supplementary claims/back billing and compounding charges, he can prefer an appeal before the Appellate Authority under section 127 of IE Act. When the statute has provided a quick, inexpensive, effective and alternative remedy under section 127 of the IE Act, if at all the Appellant is aggrieved by the Provisional Assessment Order passed by the AEE (Ele.) Jigani, he has to prefer an appeal before the Appellate Authority as specified by the State Commission. When an alternative efficacious remedy is available for the Appellant in the statute itself, the Appellant cannot question the legality of the Provisional Assessment Order demanding back billing charges and compounding charges before the CGRF, when its jurisdiction is

expressly excluded under the KERC (CGRF & O) Regulations 2004. If any order passed by the CGRF in respect of grievances which are expressly excluded from its jurisdiction, it amounts to passing of an order without jurisdiction.

- 17) It is submitted by the advocate for the Appellant that the demand notice was issued to the Appellant without affording an opportunity of hearing, the order demanding back billing charges and compounding charges is hit by principles of natural justice. In view of the express exclusion of the jurisdiction of the CGRF, to deal with legality of the Provisional Assessment Order passed by the AEE (Ele.) Jigani, the CGRF rightly held that it has no jurisdiction to deal with such an issue.
- 18) Section 135 to 152 of IE Act deals with offenses and penalties. Section 153 of the IE Act deals with the constitution of the special courts. On plain reading of section 153 makes it clear that special courts have been established for trial of the offences referred in section 135 to 140 and section 150 of the IE Act. The Appellant is contending that the Assistant Executive Engineer (Ele.) BESCO admitted that there was no theft of electricity committed by him. Whether the Appellant has committed any theft/misused the power is to be dealt with by the special courts established under section

153 of the IE Act. When the jurisdiction of the CGRF was expressly excluded in respect of the offenses and penalties as contemplated under section 135 to 139 of the IE Act, the jurisdiction of CGRF was expressly excluded as per the definition 2 (g) referred supra, the CGRF had no jurisdiction to deal with the said issue.

19) On the examination of order passed by the CGRF including the documents produced in the appeal, in view of the admitted facts as discussed supra, the CGRF on examination of the relevant provisions of the KERC (CGRF & O) Regulations 2004, and on taking into consideration the various provisions of the IE Act rightly dismissed the complaint. The order passed by the CGRF does not suffers from any material legal infirmities, the same is not perverse needs to be interfered by this authority. Accordingly, point No. 1 is answered in the negative. Looking from any angle the appeal filed by the Appellant is devoid of merits, liable to be dismissed.

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

O R D E R

- 1) The appeal is dismissed.
- 2) The interim order if any granted by this authority stands vacated.

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

- 1) M/s. Man Energy Solutions Pvt. Ltd.,
#113/B, Link Road,
Jigani, Anekal Taluk,
Bengaluru District.
- 2) Shri C. K. Nandakumar, Advocate,
519-520, Prestige Centre Point,
Level 5, No. 7, Cunningham Road,
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- 3) The Assistant Executive Engineer (Elec),
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3rd Stage, Bhima Jyothi, HSBC Layout,
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.