

**BEFORE THE ELECTRICITY OMBUDSMAN**

No0.16 C-1, Miller Tank Bed Area (Behind Jain Hospital)  
Vasanthanagar, Bengaluru-560052.

Present: S.S Pattanashetti,  
Electricity Ombudsman

**Case No. OMB/B/G-386/2020**

**Dated 28/02/2020**

In the matter of

M/s. Multiplex Biotech (P) Ltd,  
Shed No. # C428, 1<sup>st</sup> Stage,  
Peenya Industrial Area,  
Bengaluru – 560058.

**Represented by:**

Shri M.A Delvi & Shri B.M. Narayana Swamy,  
Advocate,  
#8, 3<sup>rd</sup> Cross, Pottery Town,  
Bengaluru - 560046

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Vs

Appellant

- 1) The Assistant Executive Engineer (Elec),  
O & M N-5 Sub-Division, BESCOM,  
Peenya,  
Bengaluru-560058.
- 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,  
3<sup>rd</sup> 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. Multiplex Biotech (P) Ltd, (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. C.P/CGRF/B.W.C/2019-20/5028-32, dated 31-12-2019 of CGRF, Bengaluru District, by inter-alia seeking the following reliefs:
  - a. Allow the appeal with costs.
  - b. Quash the order of the CGRF passed in NCP/CGRF/B.W.C/2019-20, dated 31.12.2019 as lack in merit.
  - c. Quash the final order AEE/AAO/N-5/5475, dated 20.02.2019 is opposed to law.
  - d. Grant costs.
  - e. To grant interim order.
- 2) Brief facts, which are relevant to the case on hand, as claimed by the Appellant/Complainant are as follows:
- 3) The installation bearing RR No. DP606 is a proprietary venture registered in the name of the Appellant/Complainant. The installation was serviced during 2006 with a sanctioned load of 65 HP and engaged in the production of biofertilizer fixed under License from the Government of India and the State Government. The activity is mixing up of different ingredients in its proper proportion for different types of agricultural needs. At any time, the raw material will be stored in the factory premises. The activity is pursued even today inspite of the false report filed by the Meter Testing Division Peenya dated 04-12-2018. In pursuance to the report filed by the Meter Testing Division Peenya the AEE (Ele) O & M served a final demand notice dated 18-12-2018 back

billing the installation for a period of 12 months amounting to Rs. 2,38,776/-. The Appellant/Complainant filed necessary objections dated 28-12-2018 followed with further submissions dated 23-01-2019 disputing the conclusion arrived at by the Meter Testing Division Peenya. The Respondent-1/AEE passed a final order dated 20-02-2019 confirming the back bill and upholding the version of the Meter Testing Officer and without even considering the objections filed by the Appellant/Complainant. Aggrieved by the arbitrary actions, a complaint was filed by the Appellant/Complainant before the CGRF Bengaluru Urban District on 07-03-2019. The CGRF Bengaluru Urban District after months of delay issued its order dated 31-12-2019 dismissing the complaint with a cut and paste order lacking application of mind. The CGRF passed a verbatim cut and paste order in respect of another case related to M/s. Global Clothing, although the events in each of the case differ materially. The CGRF order deserves to be quashed. The order suffers with non-application of mind. Hence it is requested to allow the appeal with costs, quash the order of the CGRF dated 31-12-2019 as lacking in merit, quash the final order of the Respondent-1/AEE dated 20-02-2019 as opposed to law.

- 4) Both the parties were informed vide this office letter No. OMB/B/G-386/2020/D-1416 dated 09-01-2020, 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 24-01-2020. However, they have not availed the benefit of the said provision. The case was listed for hearing on 24-01-2020, 05-02-2020 and 12-02-2020.

5) The Respondent-1/AEE has submitted his parawise comments dated 23-01-2020 at the time of hearing on 24-01-2020. He has stated that the installation bearing RR No. DP606 is serviced on 18-05-2006 under LT-5 Tariff with a sanctioned load of 65 HP in the name of Smt. Anusuya G Shetty. The installation is inspected by AEE (Ele) BESCOM MT Division Peenya on 04-12-2018 who reported that the consumer is utilizing the power supply for “Godown” purpose and hence tariff to be changed and bill to be raised under LT-3 Tariff as per BESCOM norms. As per the report of AEE (Ele) BESCOM MT Division Peenya a demand notice for back billing charges is issued to the consumer on 18-12-2018 for misuse of tariff under Regulation 42.02 of ES&D Code for a period from 01-01-2018 to 01-12-2018 for Rs. 2,38,776/- informing the consumer to pay the back billing charges within 30 days or to file objections if any within 15 days from the date of receipt of the notice. The Appellant/Complainant received the demand notice for back billing charges on 20-12-2018 and has acknowledged the notice. The Appellant/Complainant has submitted objections to the demand notice for back billing charges on 31-12-2018 and has requested to withdraw the demand notice for back billing charges stating that they have not misused the tariff from 01-01-2018 to 01-12-2018. Since machineries were shifted to other premises and the premises was vacant from past months prior to inspection by AEE (Ele) BESCOM MT Division Peenya, Bengaluru, the AEE (Ele) BESCOM MT Division Peenya Bengaluru has stated that only one machinery at the premises i.e., compressor was switched on and documents regarding industrial usage were not submitted during the inspection. After personal hearing of both consumer and AEE (Ele)

BESCOM MT Division Peenya a final speaking order was issued dated 20-02-2019 confirming the back bill issued for the period from Jan 2018 to Dec 2018 for Rs. 2,38,776/- as payable within 30 days from the date of the final order and consumer if so, desires can appeal before the Corporate Appellate Authority by making a deposit of 50% of the back bill plus 1% towards processing fees. Consumer has not paid 50% of back bill plus 1% towards processing fees appeal and not appealed before the BESCOM Corporate Appellate Authority but appealed before CGRF Bengaluru Urban District on 07-03-2019. The CGRF Bengaluru Urban District vide order dated 31-12-2019 have dismissed the appeal and have provided liberty to approach appropriate jurisdiction courts within 30 days from the date of the order.

- 6) The Appellant/Complainant's representative has filed a rejoinder at the time of hearing on 05-02-2020 to the parawise comments filed by the Respondent-1/AEE. He has stated that it is true that the installation was inspected by the AEE Meter Testing Division Peenya on 04-12-2018 and reported "Consumer utilizing power supply for Godown purposes hence Tariff is to be changed". The observation made in the report does not amount to a reason to accept it on its face value and proceed to back bill the installation which continues to be an operative industry. A Godown is part and parcel of an industry and even assuming the industry was not working at that point of time does not constitute a misuse. This AEE as a witness before the CGRF has accepted that he had not conducted any mahazar and that in Tariff Order Godowns are not listed as an item under LT-3 (Commercial Tariff). The reply stands corrected. There being no provision to straight away back bill an installation was found to utilize the energy supplied under one method

of tariff found misused for higher method of tariff. The back bill was uncalled for as it was based upon a biased report. It was incorrect to say that the consumer filed objections only on 31-12-2018, but he has also filed on 23-01-2019. In the letter dated 31-12-2018 the temporary shifting of machine was informed and, in the letter, dated 23-01-2019 it was clearly stated that the industrial shed is used to manufacture bio fertilizers, bio pesticides, bio activators and allied products for which the requirements of machinery is limited. The only grouse of the AEE, MT Division during the hearing on 05-02-2019 before the AEE (Ele) O & M N-5 Sub Division, BESCO was that the compressor was not switched on at the time of his inspection. The order of AEE N-5 Sub Division was a non-speaking order and passed without furnishing reasons to reject the submissions made and that too without causing an inspection of the factory premises. The order suffers with legal infirmities and does not constitute a speaking order. The dispute being the illegality of conclusion by the AEE Meter Testing Division Peenya who is not vested with the power of deciding the tariff applicable to an activity. Hence it was complained against before the Hon'ble Forum which after hearing and conducting cross examination of the witnesses ought to have passed an order with regard to tariff applicable, but instead has resorted to a 'cut and paste order'. Hence the question does not arise as it was not a case of misuse of tariff.

- 7) The Appellant/Complainant has further filed final statement of defense and written arguments on 12-02-2020 at the time of hearing. He has stated that the industrial installation bearing RR No. DP606 was serviced during the year 2006 is engaged in the manufacture and distribution of bio fertilizers, bio pesticides, bio activators and allied

products. The industry operates under Licenses from GOI and GOK as the raw material is supplied to the industry under License. The mixing up is carried on with minimum of machinery. There was no dispute with BESCOM till 04-12-2018, when an AEE of Meter Testing Division Peenya visited the premises ostensibly for Meter Testing but was to target the industry with a back bill. Hence, he made out a report suggesting that the unit is a godown and to apply tariff appropriately. In the Tariff Order a godown is not included under LT-3 (Commercial) Tariff Schedule. The Respondent-1/AEE in pursuance to the report filed by the Meter Testing Division issued a provisional claim dated 18-12-2018 demanding therein a sum of Rs. 2,38,776/-. Necessary objections were filed dated 28-12-2018 and 23-01-2019 contending therein the reason for shifting the machinery and contending that the installation is used for manufacturing such bio products as bio fertilizers, bio pesticides, bio activators and other allied products. It was requested therein to visit and inspect and thereafter to withdraw the charges. But very peculiarly the respondent who has to act as an Assessing Officer although conducted a hearing wherein the report made by the AEE Meter Testing Division was refuted and the case of this appellant was established, but the respondent proceeded to confirm the back bill on the ground which was contrary to the charge made out by the Meter Testing Division. The respondent orders "the Back Bill shall be continued to be levied for 3 months. The unauthorized supply shall be disconnected if not regularized within 3 months from the date of the order". The respondent in his final order forgets that the charge against the appellant is one of misuse wherein he converts it into unauthorized supply and passes an order. The order being perverse and

hence deserves to be set aside. The CGRF conducted a detailed and indepth hearing wherein the Respondent/AEE N-5 Sub Division and the AEE Meter Testing Division were examined. The AEE Meter Testing Division admitted that he had not conducted any mahazar of the spot and that he failed to examine the Licenses, he was also not sure with regard to the absence of “godown” in the LT-3 Tariff Schedule. The Respondent-1/AEE admitted that the final order was passed without he inspecting the installation. Unfortunately, the Respondent CGRF dismissed the complaint with a “cut and paste” order which has no nexus with the issues before it. The respondent has failed to establish that the premises was an exclusive godown or there was no industrial activity there at. The respondent was unable to defend the wild charge filed by the Meter Testing Division. The charge stands disproved as no circumstantial or material evidences were adduced by the respondent during the proceedings. The Appellant/Complainant was a victim of an unsubstantiated and wild charge of calling an industry as a godown which stands disproved with substantial evidences including the licenses from GOI and GOK and hence prayed to allow the appeal/complaint with costs. He has also submitted along with the written argument a few photographs to show the activities in the industry.

- 8) Perused the appeal memo filed by the Appellant/Complainant, parawise comments submitted by the Respondent-1/AEE, the rejoinder filed by the Appellant/Complainant and also the final statement of the defense and written arguments filed by the Appellant/Complainant. It is an admitted fact that the Appellant/Complainant is a proprietary firm registered in the name of Smt. Anusuya G Shetty. The installation

bearing RR No. DP606 was serviced during 2006 with a sanctioned load of 65 HP and is engaged in the production of bio fertilizers, bio pesticides, bio activators and allied products. The cause of action arose when the Meter Testing staff of Peenya Division inspected the installation of the Appellant/Complainant on 04-12-2018 and reported that “Consumer utilizing power supply for Godown purposes hence Tariff is to be changed”. As per this report the Respondent-1/AEE issued a demand notice dated 18-12-2018 as back billing charges to the Appellant/Complainant for misuse of Tariff for a period from 01-01-2018 to 01-12-2018 for Rs. 2,38,776/- informing the Appellant/Complainant to pay the back billing charges within 30 days or to file objections if any within 15 days from the date of receipt of the notice. After receiving the notice, the Appellant/Complainant filed his objections to the demand notice for back billing charges requesting to withdraw the demand notice. The contention of the Meter Testing Staff of the Licensee is that only one machinery i.e., compressor was switched on and documents regarding industrial usage were not submitted during their inspection. After personal hearing of both the Appellant/ Complainant and AEE Meter Testing Division Peenya, the Respondent-1/AEE passed a final speaking order on 20-02-2019 confirming the back bill issued for Rs. 2,38,776/-. The Appellant/Complainant aggrieved by the final order passed by the Respondent-1/AEE filed a complaint before the CGRF Bengaluru Urban District on 07-03-2019. The CGRF Bengaluru Urban District vide letter dated 31-12-2019 dismissed the appeal providing liberty to the Appellant/Complainant to approach appropriate jurisdiction courts within 30 days from the date of the order. The Appellant/Complainant

has filed an appeal/complaint before this authority challenging the order of the CGRF Bengaluru Urban District.

9) The contention of the Appellant/Complainant is that they have not misused the Tariff from 01-01-2018 to 01-12-2018, since machineries were shifted to other premises and the premises was vacant prior to the inspection by AEE (Ele) BESCOM MT Division Peenya Bengaluru. A mere observation made by the Meter Testing Staff of the Licensee does not amount to a reason to accept it on its face value and proceed to back bill the installation. A godown is part and parcel of any industry and even assuming that the industry was not working at that point of time does not constitute a misuse. In the proceedings conducted by the Respondent-1/AEE who is also the Jurisdictional Assessing Officer, the Meter Testing Staff of the Licensee has admitted that no mahazar of the inspection was conducted and in the Tariff Order for the relevant year “godowns” are not listed as an item under LT-3 (Commercial Tariff). The temporary shifting of machine was informed to the Respondent-1/AEE in the objections filed by the Appellant/Complainant dated 31-12-2018. In the objections dated 23-01-2019 it was also clearly stated that the industrial shed is used to manufacture bio fertilizers, bio pesticides, bio activators and allied products for which the requirement of machinery is limited. The industrial activity of the Appellant/Complainant in the said premises is mixing up of different ingredients in its proper proportion for different types of agricultural needs. At any time, the raw material will be stored in the factory premises.

In any industrial/manufacturing unit there will be raw materials required for producing the end products and also finished products after

the manufacturing process is completed. Both the raw materials as well as the finished products have to be kept within the premises of the industrial unit. Obviously, they cannot be kept on the road fearing inspection by the Licensee's Meter Testing Staff who may presume that the premises is being used as a godown. It has to be accepted that storage of raw materials before consumption as well as finished products before the dispatch from the manufacturing premises are part and parcel of the industrial/manufacturing process. The several photographs submitted by the Appellant/Complainant along with his final statement of defense and written arguments amply prove that the requirement of machineries for the process of manufacture of bio fertilizers, bio pesticides, bio activators and allied products is limited. The process involves more man power and storage of raw material. Mere temporary stocking of raw materials for the purpose of manufacture or stocking of finished goods for the purpose of dispatch to market till the vehicle arrives and takes them away does not change the usage of the premises from industrial to commercial purpose. There has not been any misuse of electricity from industrial to commercial as alleged by the Meter Testing Staff of the Licensee and the Respondent-1/AEE. Just because the Meter Testing Staff and the Respondent-1/AEE have said that there is misuse of power it does not mean that there is misuse of power. There has been a mis-understanding of the activity going on in the premises in question. It is a wrong presumption on the part of the Meter Testing Staff and Respondent-1/AEE. It is not a case which comes under Section 126 of Electricity Act 2003 and Clause 42.02 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka (COS).

The Meter Testing Staff of the Licensee, Respondent-1/AEE and Respondent-2 CGRF have wrongly come to the conclusion that there has been a misuse of electricity.

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

**No. OMB/B/G-386/2020/D-1440**

**Dated 28-02-2020**

**O R D E R**

1. The Appeal/Complaint is allowed.
2. The order of the CGRF order No. C.P/CGRF/B.W.C/2019-20/5028-32, dated 31-12-2019 is set aside.
3. The final order of Respondent-1/AEE dated 20-02-2019 is also set aside.

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

- 1) M/s. Multiplex Biotech (P) Ltd,  
Shed No. # C428, 1<sup>st</sup> Stage,  
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Bengaluru – 560058.
- 2) Shri M.A Delvi & Shri B.M. Narayana Swamy,  
Advocate,  
#8, 3<sup>rd</sup> Cross, Pottery Town,  
Bengaluru – 560046
- 3) The Assistant Executive Engineer (Elec),  
O & M N-5 Sub-Division, BESCOM,  
Peenya,  
Bengaluru-560058.

- 4) Chairperson, Consumer Grievance Redressal Forum (CGRF)  
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3<sup>rd</sup> 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.
- 9) Chairperson of all CGRF's in the State.