



**Before the Electricity Ombudsman**  
**9/2, 6<sup>th</sup> Floor, Mahalakshmi Chambers, M.G.Road,**  
**Bangalore**

**Present: B.R.Jayaramaraje Urs, IAS (Retd.)**

**Electricity Ombudsman**

**Case No.OMB/C/G-139/2012/135**

**Dated 6.12.2012**

M/s.Vishal Nirmithi Private Limited,  
 BWSSB, T.K.Halli Village,  
 Malavalli Taluk,  
 Mandya District.

**(Represented by Sri Shridhar Prabhu, Advocate -  
 Authorised Representative)**

**.. Appellant**

**Vs**

1. Assistant Executive Engineer,  
 O & M Sub Division-2,  
 Chamundeshwari Electricity Supply Corpn.Ltd.,  
 Malavalli,  
 Mandya District.

2. Consumer Grievances Redressal Forum (C.G.R.F)  
 #1633, Annapoorneshwari Complex, 1<sup>st</sup> Cross, Anikethana Road, (North),  
 P & T Block, Kuvempunagar,  
**Mysore-570023**

**.. Respondents**

1. This is an appeal under Regulation 21.2 of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004 against the endorsement issued by the Chief Engineer CESC, Mysore Circle vide No. ಮುಇಂ(ಎ)/ಅಕಾ/11-12/714-18 ದಿನಾಂಕ **17/03/2012** in response to the Complaint filed by the Appellant dated 18.02.2012 against the order passed by the Assistant Executive Engineer(EI), CESC, Malavalli

(hereinafter referred to as the 1<sup>st</sup> Respondent) vide No. ಸಕಾನಿಲ:ಹಿಸ:ಮ:ಉವಿ-2:1544 ದಿನಾಂಕ 24.12.2011.

2. The Appellant is a Civil Contractor doing civil work for BWSSB. In the instant case, BWSSB had sub-contracted certain works to the Appellant and, to execute these works, the Appellant sought power from CESC, Mysore and, accordingly, 200 KVA power was sanctioned to the Appellant. The agreement was executed and, in the agreement, tariff category was mentioned as H.T-2(b). The Appellant was billed under H.T-2(b) tariff category (commercial). The Assistant Executive Engineer (EI), O&M Sub-Division, Malavalli issued a Show Cause Notice to the Appellant dated 29.10.2010 contending that the power supply had to be billed under L.T-7 category. This Show Cause Notice was challenged by the Appellant before the Hon'ble High Court. The Hon'ble High court, after hearing the W.P, passed orders directing the Assistant Executive Engineer(EI) to treat the Show Cause Notice already issued as Notice and to afford an opportunity to the Appellant to file objection and to pass suitable orders considering the objections. In compliance with the said order, the Appellant filed objections on 24.01.2011 and the Assistant Executive Engineer(EI), after considering the objections, passed orders reiterating his earlier stand. Aggrieved by the said order, the Appellant filed a complaint before Consumer Grievance Redressal Forum, CESC, Mysore (hereinafter referred to as the 2<sup>nd</sup> Respondent) and the Appellant did not receive any notice for hearing from the 2<sup>nd</sup> Respondent and, instead, he received an endorsement from the Chief Engineer, CESC, Mysore Circle dated 17.03.2012 rejecting the complaint and advising the Appellant to approach the Appellate Authority under 44.01 Of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka if he was aggrieved by the orders of the 1<sup>st</sup> Respondent. The Appellant has filed this appeal against the endorsement issued by the Chief Engineer, CESC, Mysore.

3. The 1<sup>st</sup> Respondent's comments were called vide letter No OMB/C/G-139/2012/108 dated 11.9.2012 and the 1<sup>st</sup> Respondent has furnished his comments vide letter No AEE(E)/AE(T)/Mvl-2/2010-11/1411 dated 11.10.2012.

4. In his comments, the 1<sup>st</sup> Respondent has submitted that the Appellant had initially been billed under H.T-2(b) category. During inspection of the installation, the Vigilance Squad observed that the installation had wrongly been billed under H.T-2(b) category and advised the 1<sup>st</sup> Respondent to bill the Appellant under L.T.-7 category. Based on this report, the 1<sup>st</sup> Respondent raised back-charges for Rs.4,53,180/- (which was subsequently revised to Rs.15,73,911/- under LT tariff, including Rs.4,53,180/- claimed earlier) and, hence, sought dismissal of the appeal.

5. The matter was taken up for hearing on 10.09.2012 and, on behalf of the Appellant, Advocate, Sri Shridhar Prabhu appeared and put forth his arguments and, on behalf of the 1<sup>st</sup> Respondent, the Superintending Engineer, Shri B.R Umesh Kumar, Zonal Office, CESC, Mysore appeared and advanced his arguments and on behalf of the 2<sup>nd</sup> Respondent Assistant Executive Engineer (EI) O&M Sub-Division-2, Malavalli, appeared and submitted his arguments.

During the hearing, both the Appellant and the Respondents reiterated their submissions made in the appeal memo and replies respectively.

6. Both parties were informed vide letter No.OMB/C/G-139/2012/117 dated 03.10.2012 regarding availability of Sub-Regulation 1 of Regulation 20 of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 which provides for settlement by agreement through conciliation and mediation. However, both parties have not availed this opportunity. Hence, I am proceeding to pass an order in this matter.

7. Having regard to the contending positions of the parties, the issues that emerge for our consideration are:

***a) Whether the Chairperson has got over-riding powers to take any decision regarding the complaints filed by the Consumer in exclusion of other CGRF members?***

***b) Whether the Chairperson is right in issuing endorsement to the Appellant to approach the Appellate Authority under Regulation 44 of***

***Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka ?***

8. In order to answer the above questions, we will have to examine Regulation 8.2 of the KERC (CGRF & Ombudsman) Regulations, 2004, which states that ***"the proceedings of the Forum shall be conducted by the Chairperson of the Forum in the presence of the Members, the quorum being two. In the absence of the Chairperson for any reason the Member representing the Licensee shall preside over the Forum."*** Further Regulation 8.3 ***states "Every order made by the Forum shall be signed by its Chairperson and the Members conducting the proceeding. Provided that in case of difference of opinion among the members on any point or points, the decision of the majority shall be final."*** From the reading of the above Regulations, it is clear that when complaint is addressed to the Chairperson of the 2<sup>nd</sup> Respondent, it has to be placed before the 2<sup>nd</sup> Respondent for decision and the Chairperson has no powers under the Regulations to take any decision individually.

9. The Chief Engineer's endorsement dated 17.03.2012 advised the Appellant to approach the Competent Authority under Regulation 44.01 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Under this Regulation, the Assistant Executive Engineer(EI) can pass orders in case of (a) prejudicial use of power (b) Misuse of Electricity and (c) unauthorised extension of supply. Any person, aggrieved by the orders of the Assistant Executive Engineer(EI), can file appeal before the Appellate Authority under the said Regulation. The instant case does not come under the purview of 2(g)(1)(2)(3) of KERC (CGRF and Ombudsman) Regulations, 2004 as the Licensee itself has sanctioned power under HT-2(b) tariff category and the agreement also reflects the HT-2(b) status of the Appellant. The billing also has been done under this category.

10. From the discussion made above, the impugned endorsement amounts to:

a) Forcing the Appellant to approach the Appellate Authority under Regulation 44 of the Conditions of Supply of Electricity of Distribution Licensees in the State of

Karnataka though the case does not fall under the purview of Regulation 2(g)(1)(2)(3) of KERC (CGRF and Ombudsman) Regulations, 2004.

(b) Making CGRF inaccessible to the Consumers by issuing wrong endorsement to approach the Appellate Authority under Regulation 44 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

(c) Arbitrary exercise of powers without placing the Complaint before the 2<sup>nd</sup> Respondent for its decision.

(d) Forcing the Complainant to deposit  $\frac{1}{3}$  of the disputed amount for filing appeal before the Appellate Authority under Regulation 44 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

(e) Issuing endorsement keeping the 2<sup>nd</sup> Respondent in darkness.

11. Hence, the matter is to be remanded to the 2<sup>nd</sup> Respondent to hear the matter and to pass orders in the light of the observations made above.

## ORDER

12. For the foregoing reasons, the case is remanded to the 2<sup>nd</sup> Respondent for decision in the matter in the light of the observations made supra.



(B.R. Jayaramaraje Urs)  
Electricity Ombudsman

1. M/s. Vishal Nirmiti Private limited, BWSSB, T.K. Halli Village, Malavalli Taluk, Mandya District (represented by Sri Shridhar Prabhu, Advocate)

2. Assistant Executive Engineer, O & M Sub Division-2, CESC, Malavalli, Mandya District.

3. Consumer Grievance Redressal Forum, CESC, #1633, Annapoorneshwari Complex, 1<sup>st</sup> Cross, Anikethana Road, (North), P & T Block, Kuvempunagar, Mysore-570023

4. Managing Directors of all ESCOMs.

5. PS to Hon. Chairman, KERC
6. PS to Hon. Member(H), KERC
7. PS to Hon. Member(S), KERC
8. PS to Secretary, KERC
9. OCA