Before the Electricity Ombudsman
9/2, 6th Floor, Mahalakshmi Chambers, M.G.Road, Bangalore
Present: B.R.Jayaramaraje Urs, IAS(Retd.)
Electricity Ombudsman
Case No.OMB/B/G-97/2011/11198
Dated 09.11.2011

BETWEEN

M/s.Larsen and Toubro Limited,
ECC Division Project Manager,
Project Site,
Bangalore International Airport,
(Sy.No.12) Bettakote Village,
Devanahalli Taluk,
BANGALORE
(Represented by Sri Shridhar Prabhu, Advocate) .. Appellant

Vs

1. Assistant Executive Engineer,
O&M Sub Division,
BESCOM,
Devanahalli Taluk,
Bangalore
(Represented by Sri Sriranga, Advocate)

2. Consumer Grievances Redressal Forum (C.G.R.F)
BESCOM Corporate office,
K.R.Circle,
Bangalore-560001 .. Respondents

This is an appeal under the provisions of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations 2004 against the order passed by the CGRF, BESCOM, Bangalore (hereinafter referred to as the 2nd Respondent) vide

No CGRF/10/2010/1035-42 dated 4th September 2010 in respect of the Appellant's grievance relating to audit short claims of BESCOM for Rs.95,86,451/- and refusal of the 2nd Respondent to issue any direction to the 1st Respondent not to collect the short claims from the Appellant. Being aggrieved by the 2nd Respondent's order (the impugned order), the Appellant has submitted his case as under:

The Appellant is a Company incorporated under the provisions of Companies Act and a consumer of the 1st Respondent coming under the jurisdiction of Devanahalli Electrical Sub-Division bearing R.R.No. DY HT 56, with 500 K.V.A power supply pursuant to the agreement for permanent power supply at High Tension dated 17th October 2005. This contract demand was enhanced to 990 K.V.A by adding another 490 K.V.A with effect from 20th November, 2006 pursuant to an agreement dated 4th August, 2006.

Suddenly, on 23rd December, 2008, the 1st Respondent issued a letter demanding payment of Rs 95,86,451/- within 30 days alleging against the Appellant that the power supply was being used for construction purposes .Subsequently on 25th May, 2009, the appellant issued a surrender letter after adjusting the consumption charges.

The Appellant had been under the impression that he had complied with the requirements of the 1st Respondent. However, to his dismay, the 1st Respondent issued one more letter dated 17th September, 2009 claiming back billing charges of Rs 1,11,70,246/-. Again, the 1st Respondent issued a final demand notice dated 30th December, 2009 stating that they would adjust the deposits of other installation Viz., DY HT 63 against the dues. Aggrieved by this, the Appellant filed a complaint before the 2nd Respondent and the 2nd Respondent, after hearing the appellant and the 1st Respondent, passed orders declining to grant any relief to the Appellant. Being aggrieved by the 2nd Respondent's Order (the impugned order), the Appellant has filed this appeal.

In his appeal memo, the Appellant submitted that the Hon'ble High Court of Karnataka, in case of Mr.H.N Nanje Gowda Vs. State of Karnataka and others passed an order on 12th March, 1996 in which it was held that the Airport is an Industry and based on this the 1st Respondent should have applied H.T.2 (b) Tariff to the Appellant. Taking into account the construction power to industry and bringing such activity under H.T.2(b) category is fully justified. This aspect was pleaded before the 2nd Respondent and the 2nd Respondent has not considered this aspect and further the 2nd Respondent has not assigned any reasons for rejecting the prayer of the Appellant.

The power sanction was for 990 K.V A and this was classified under H.T category as per KERC Regulations and, hence, L.T-7 Tariff Schedule cannot be applied to this case. The power was sanctioned on permanent basis and this was borne out from the application and sanction letter, but this factor was ignored by the 2nd Respondent.

Further, the 2nd Respondent has ignored the fact that the Appellant has been allowed to surrender the installation and fresh power has been supplied in the same premises. If the appellant owed any amount, the 1st Respondent would not have sanctioned power to the Appellant. The 1st Respondent has not taken any action against any officer responsible for sanction of power supply to the Appellant. This goes to show that there is no error in the classification of tariff to the installation.

The 2nd Respondent has failed to appreciate that the Appellant for the period of back billing is governed by the Tariff Order 2003 and the General Terms & Conditions of Tariff contained therein.

The 2nd Respondent has not provided an opportunity of hearing and has denied natural justice to the Appellant as the Appellant has not been allowed to cross-examine the 1st Respondent and none of the grounds urged by the Appellant have been refuted nor discussed in the order. Hence, the Appellant has prayed this

Authority to set aside the Order passed by the 2nd Respondent (impugned order) and allow the appeal.

The 1st Respondent's comments were called vide letter dated 17th January, 2011 and, in pursuance to this, the 1st Respondent furnished his comments on 4th February 2011. In his comments, he submitted that the power supply to the Appellant had been sanctioned for construction of Airport with N.O.C of Bangalore International Airport Limited. Initial agreement for 500 K.V.A and contract had been signed on 17th October 2005 for construction purposes. The Tariff billed from the date of service had been under H.T.2(b) in spite of LT-7 Tariff. This Tariff had been pointed out by the Internal Audit of 1st Respondent & provisional back billing notice for Rs 95,86,451/- had been issued to M/s. L & T Company. Another H.T service had been availed by M/s. L & T Company for some construction purposes bearing R.R No DY HT 87. Audit short claim had been made amounting to Rs.6, 65,978/- and M/s. L & T Company paid this amount on the same day against R.R No. DY HT 87 admitting the short claim made. Audit short claim had been made as per the provisions under Clause 3.04 of "Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka". He further submitted that as per Tariff order 2005, Airport is classified under H.T.2(b) Tariff Schedule which clearly indicated that Airport was not an Industry. The 2nd Respondent had justifiably upheld the short claims of the 1st Respondent by dismissing the complaint of the Appellant and, hence, prayed this authority to dismiss the appeal.

The Appellant filed a Memorandum of Rejoinder on 26th August, 2011 and, in the rejoinder, it was submitted that the Appellant in the Application Form for supply of power in the column for purpose of power had clearly stated as **`Temporary`**. However, the 1st Respondent had taken a conscious decision that there was no provision in the Tariff Orders or in Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka to apply temporary tariff to H.T installation. Hence, even though the Appellant applied for a temporary connection, the 1st Respondent, after deliberations at the highest level, had taken a decision and

executed an agreement dated 4th August 2006 for 990 K.V A with permanent power supply under High Tension category in the format as provided by the Respondent Company and as approved by the KERC. Hence, there was no doubt that it was only after considering the application of the Appellant and on application of mind, the 1st Respondent had entered into the said agreement. Further, this agreement was binding on both the parties as the agreement had not been terminated by either parties either under the terms of agreement or otherwise. Once the agreement was valid and binding on both the parties, other correspondences issued, if any, including the Demand Notice had no legal significance and were not binding on the parties. Importantly, during the currency of a statutory agreement, there was no provision under the Act, Rules or Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka to change the tariff, nature and voltage of supply or bill in variance of the agreement; unless the agreement was terminated validly and fresh agreement was executed.

The Appellant added that if the Complainant fell under the L.T-7 Tariff, the 1st Respondent ought to have followed the procedure prescribed under Condition No.3.04 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. There had been no impediment for the 1st Respondent to follow the procedure. Admittedly, the 1st Respondent had not re-classified the Appellant under condition No 3.04 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. This being the case, the 1st Respondent was estopped from applying tariff other than H.T.2(b) Tariff Schedule and categorising the Appellant under L.T-7 Tariff Schedule. Raising a short claim subsequently for a huge sum of amount without first following the procedure for reclassification was not permissible as per law and facts and this act was arbitrary and untenable.

The Appellant further submitted that the 1st Respondent contended before the 2nd Respondent that temporary supply under H.T.2(b) Tariff Schedule had been discontinued from the year 2000 and, this being the case, the Appellant could not have been categorised under the L.T-7 Tariff Schedule. Further, clauses 2.34 & 2.37

of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka have defined High Tension & Low Tension as under:

High Tension: (H.T) Means supply voltages of more than 650 volts and upto and inclusive of 33000 volts.

Low Tension: (LT) means supply voltages of 650 volts & below.

Admittedly, the Appellant being supplied at 11000 volts by the 1st Respondent and, therefore, by no stretch of imagination could it be stated that the Appellant was a H.T Consumer and the 1st Respondent could not have provided power supply to the Appellant under L.T-7 Tariff Schedule.

The procedure for arranging power supply on temporary basis is governed by Condition No 12 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and, importantly, the temporary supply can be arranged only in respect of L.T Installation and not H.T installation. The procedure for arranging power supply to H.T installation is governed by Condition No 8 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Admittedly, the 1st Respondent had issued the power sanction letter indicating that the Appellant would be supplied electricity under H.T 2(b) Tariff Schedule. Further, the Appellant had been regularly paying the monthly bills as raised by the 1st Respondent, the receipt of which had been acknowledged by the 1st Respondent. Thus, having received the amounts periodically, the 1st Respondent was estopped from suddenly applying L.T-7 Tariff Schedule to the Appellant.

The Appellant further contended that the 1st Respondent during the course of hearing had admitted that the Appellant on 25th May, 2009 had surrendered the installation and sought disconnection of the installation. However, by the 1st Respondent's own admission the surrender had not been approved. Therefore, even according to the 1st Respondent, the installation was still alive and the agreement

still continued to bind the parties. Even at the belated stages, the 1st Respondent had not chosen to terminate the agreement and re-classify the Tariff. At no point of time, the 1st Respondent had issued notice under Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka calling upon the Appellant to execute a fresh agreement duly observing the other conditions if required based on the altered classification.

The Appellant further added that the tariff category and voltage levels had no connection and this was a dangerous proposition being proposed by the 1st Respondent. If the 1st Respondent took a stand that a consumer availing more than 67 H.P power could avail L.T.Power supply, then this would lead to a devastating consequences as all H.T consumers of the 1st Respondent would start opting for L.T Supply. This proposition was observed for the simple reason that there is no provision under the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka or the Tariff Order passed by the KERC from time to time availing power supply above 67 H.P to be categorised under L.T Supply. Further, the contentions raised by the 1st Respondent dehorns the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and Tariff Schedule approved under the applicable Tariff Order. This argument so put forth by the 1st Respondent is not envisaged under the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. The 1st Respondent was bound by the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and it was not open to him to traverse beyond those conditions and, hence, the Appellant prayed to dismiss the contention raised by the 1st Respondent .

Lastly, the Appellant in his Memo of Rejoinder submitted that it was relevant to note that Annexure 13 had been issued by the office of the 1st Respondent, pursuant to several correspondences that were being exchanged between the parties about the tenability of the short claims so made. Further, the Appellant maintained that the audit objection that had been raised had been communicated to the Appellant by their letter dated 23rd December, 2008 in the first instance.

However, the letter cited at Annexure A-13 superseded all previous correspondences. This letter stared at the contrary stand taken by the 1st Respondent to jeopardize the Appellant. The 1st Respondent though had been aware of the audit short claim, however, had been convinced that the Appellant ought to have been billed under H.T.2 (b) Tariff Schedule alone and, hence, the letter at Annexure A-13 had been issued and, in this background, he prayed to allow the appeal.

The Advocate for the 1st Respondent filed additional statement on 5th September 2011. In the additional statement, the Advocate for the 1st Respondent submitted that he had already filed statement which might be read as part and parcel of this additional statement and, in addition to this, he was desirous of placing the following two vital aspects on record which have a bearing on the issue under consideration.

1) It is an admitted fact that the Appellant Company had been engaged for the purpose of construction of Bangalore International Airport. It is also an admitted fact that the power supplied by the 1st Respondent had been utilized for construction of the Airport. It is also an admitted fact that the Appellant Company is not in the business of running an Airport. It is also undisputed that the requirement of power for construction of an Airport and the requirement of power and usage for running an Airport are incomparable and are different. It cannot be disputed that the power procured by the Appellant has, in fact, been used for construction activities. By no stretch of imagination could it be said that the power procured and utilised by the Appellant was used for running an Airport for the simple reason that there was no Airport in existence and the same was being built by the Appellant Company. Having regard to this fact, the only conclusion that can be drawn is that the power has been utilised for construction activities and, therefore, the tariff to be applied would be one which is for construction activities which is LT-7 and not H.T.2 (b) as alleged.

2) Fixation of Tariff is the activity of KERC. It is only the Regulatory Commission which has the power to regulate the tariff under Section 62 of Electricity Act, 2003. The Tariff so fixed by the Regulatory Commission is binding on all the concerned Utilities as well as the consumers. The Regulatory Commission has passed tariff orders from time to time which determines the tariff to be charged by the Distribution Licensees for the electricity supplied by them to the consumers. The tariff so fixed is binding on the Appellant and also who has availed power for construction activity. It is not possible for the Appellant to contend that the Utility has mistakenly billed the consumption under a wrong tariff head and, therefore, the same shall be continued. The Appellant cannot plead estoppel as there is no estoppel against the statutes and it is a settled law that fixation of tariff is a legislative exercise being carried out by the regulated conduct. Based on the admitted facts, the appeal deserved rejection and the action of the power Utility applying the proper tariff head and demanding the difference in tariff ought to be upheld.

In the light of the above, the Advocate prayed for dismissal of the appeal with cost in the interest of justice.

The matter was taken up for hearing on 3rd March 2011 and hearing finally concluded on 10th October, 2011.

On behalf of the Appellant, Sri Shridhar Prabhu, Advocate appeared and argued the case. For the 1st Respondent, Advocates Sri Sriranga & Ms. Manasa & Sri Vinayak, Asst. Law Officer, BESCOM appeared and put forth their arguments.

Sri Shridhar Prabhu, Advocate for the Appellant, reiterated the submission made by the Appellant in his appeal memo and further argued that the appellant had availed power for construction of Airport which is declared as an Industry and the Appellant in his application for sanction of power had sought temporary power supply for construction of Airport and the Applicant had not concealed anything from

the 1st Respondent. The Distribution Licensee after detailed deliberation at the highest levels had decided that power had to be supplied to the Appellant under H.T.2(b) Tariff Schedule and, accordingly, power sanction letter had been issued on 1st November, 2005. In pursuance to the decision, an agreement had been signed between the Appellant and the 1st Respondent and in the agreement it had been clearly mentioned that power had been sanctioned on permanent basis under H.T.2(b) category. Initially 500 K.V.A power had been sanctioned and agreement had been signed on 17th October 2005 and subsequently, 490 K.V.A power had been sanctioned and agreement had been entered into between the parties on 4th August, 2006. Totally, agreement had been entered for 990 K.V.A power supply. These agreements were still in existence and not annulled and the 1st Respondent could not arbitrarily decide that the Appellant came under L.T. 7 Tariff Schedule and power supply had been made on temporary basis. This was said to be done on the basis of the Audit Report. The Auditors without conducting spot inspection had come to the wrong conclusion that power had been sanctioned for construction of Airport and construction activity was not declared as an industry and, hence, it should be categorised under L.T-7 Tariff Schedule and apply tariff applicable to that category. Based on the Audit Report, the 1st Respondent made a short claim for Rs.95,86,451/- after the work had been completed, accounts closed and surrendering of the installation.

The Advocate for the Appellant further argued that for the mistake of the officers the Appellant should not be penalised. If officers had done misclassification, the 1st Respondent should have recovered the differential amount from the officials concerned instead of making short claims on the Appellant. Further, power supply exceeding 50 kW should come under H.T.2(b) Tariff Schedule and 990 kW power cannot be sanctioned under L.T-7 Tariff Schedule. The 1st Respondent without having a revised agreement could not have changed the category from H.T.2(b) to L.T-7 and, that too, after the completion of the work and surrendering of the installation.

Concluding the argument, the Advocate for the Appellant prayed for quashing the impugned order and to direct the 1st Respondent to refund the excess amount collected on account of wrong application of Tariff Schedule concerning the Appellant.

Sri Yogeesh, Asst Executive Engineer(E), Devanahalli Sub-Division argued that the Appellant had applied for power in the year 2005 and power had been sanctioned on 1st November, 2005. Agreement had been executed on 17th.October 2005. Both parties signed the agreement for 500 K.V.A. power supply and 2nd agreement on 4th August, 2006 for 490 K.V.A. The Appellant in their application had sought power temporarily and when they sought additional power, the Appellant had mentioned that power had been for construction purposes i.e batching plant, Hot Mix Plant, etc. M/s. L & T Company applied for power as a construction Company. As per 2005 Tariff Orders, if power was supplied for industries, then it was considered under H.T.2(b) Category. But Airport was not declared as an industry. Hence, 1st Respondent re-classified the Tariff Schedule from H.T.2(b) to L.T-7. The 1st Respondent had powers to re-classify the consumer under Clause 3.04 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. In a similar case relating to the Appellant where power had been sanctioned to an installation for construction of Airport, the Appellant had agreed and paid Tariff under L.T-7 Tariff Schedule.

Appearing for the Respondents, the Asst Law Officer, BESCOM submitted that the Appellant had executed two agreements with the 1st Respondent and in those agreements they had clearly mentioned that power was being used for construction purposes. The Appellant in the application form had mentioned that they were applying for temporary connection. Initially, power had been supplied under H.T.2(b) Tariff Schedule. Bills were also raised under H.T.2(b) Tariff Schedule. When Auditors pointed out that this installation should have been billed under L.T-7 Tariff Schedule, 1st Respondent made short claims. This case came under L.T-7 Category. Temporary power supply was for a maximum period of 2 years. In the

beginning, it was wrongly classified under H.T.2(b) Tariff Schedule and, subsequently when the 1st Respondent came to know that power was being used for construction activity, it took a decision to categorise this under L.T-7 Tariff Schedule. 1st Respondent had issued a notice making short claims for Rs.95,86,451/-. Seven days time had also been given to the Appellant and the Appellant had replied to that letter on 2nd January, 2009 and one more letter was issued on 30th September 2010 to pay the amount.

Sri Sriranga, Advocate, appearing for the 1st Respondent argued that it was undisputed that the Appellant had consumed electricity and even the quantum of power used and the nature of activity and purpose were not in dispute. As regards the amount to be charged for the amount of energy used, the 1st Respondent initially misclassified it as H.T.2(b) instead of L.T-7. On this ground, the Appellant could not claim estoppel as the 1st Respondent was not the authority to determine tariff. Such powers were vested with the Commission. KERC under Section 62 of The Electricity Act 2003 determines tariff. Tariff Orders 2005 was passed under section 62 of The Electricity Act, 2003. Tariff Fixation is a legislative policy and process and KERC Tariff Order 2005 is binding on both parties. The Appellant cannot claim estoppel against statutes. Initially, Tariff Head had been wrongly mentioned. Short claims were collected as per Rules. Under Clause 3.04 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, ***"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"***

The Advocate for the 1st Respondent submitted that action would be taken against the erring official for wrong classification of Tariff. In this background, he prayed to confirm the orders of the 2nd Respondent and dismiss the appeal.

Both parties were informed vide letter No.OMB/B/G-97/2010/10210 dated 20.05.2011 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.

From the contentions made above, the issue that come up for our consideration is:

Whether the 1st Respondent is right in billing H.T installation under L.T-7 Tariff Schedule?

The Advocate for the Appellant has based his arguments on the premise that there is no provision for billing H.T installation under L.T Tariff Schedule. We have to examine whether this premise is based on sound footing.

From the arguments, it is found that the Appellant has availed 990 K.V.A power for construction of Bangalore International Airport in 2005 and this power was initially sanctioned under H.T.2(b) Tariff Schedule. Later, during the course of audit of the installation, the internal auditors of the 1st Respondent observed that the Appellant had been supplied power for construction purposes and the Tariff Schedule H.T.2(b) had been wrongly applied instead of L.T-7 Tariff Schedule. Based on the Audit Report, the AEE, O & M Sub-Division, BESCOM, Devanahalli issued a revised bill for Rs.95,86,451/- for the period from January 2006 to November 2008. Thereafter, the Appellant appears to have paid the short claims and surrendered the installation to the 1st Respondent. The Appellant later contested the short claims before the 2nd Respondent.

The Appellant claims that he ought to have been billed under H.T.2(b) Tariff schedule instead under L.T-7 Tariff Schedule. If we examine the Tariff Schedule 2005, it becomes clear that Airport is included under H.T 2(b) Tariff Schedule which applies to commercial complexes and the argument of the Appellant that under

construction of Airport also comes under this Schedule cannot be accepted. This Tariff is obviously made applicable to a full-fledged and commissioned Airport and not Airport under construction. Hence, the arguments that the Appellant comes under H.T.2(b) Tariff Schedule is also unacceptable.

The Advocate for the Appellant has advanced arguments that there is no provision under the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka or the Tariff orders to categorise the consumers availing power exceeding 67 H.P under L.T-7 Tariff Schedule. This argument does not hold water because Clause 12.01 (c) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka provides for such contingencies and is applicable to L.T power Supply and the extracts of the relevant provisions are given below:

> ***"(a) The prospective consumer shall apply for temporary supply in the prescribed form to the section/Sub- Division of the Licensee. No registration-cum-processing fee is payable. He shall pay service charges of Rs.50/- per installation and advance estimated power consumption charges as per Clause 12.01(c) at the prevailing Tariff rate.***
>
> *Further Clause 12.01(c) under the Heading "Estimated power consumption charges" says that* ***"Applicant/ consumer shall deposit advance estimated power consumption charges for the energy calculated at 12 units per kW per day for duration of temporary supply.*** *Next Para of that clause reads* ***"In addition to the above, if the load is 50 kW or more / 67 H.P or more the consumer has to pay fixed charges in addition to advance estimated power consumption charges at the prevailing Tariff Rate."***

This clearly debunks the theory that power supply exceeding 67 H.P has to be dealt only under H.T Tariff Schedule. Under this clause, L.T Temporary Power supply can be made exceeding 67 H.P and when such supplies are made, the consumer has to pay advance estimated charges at the prevailing tariff rate.″

In the present case, the Appellant has totally availed 990 K.V.A power. Chapter III of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka details about systems and classification of supply.

Clause 3.01 defines (a) Low Tension Supply.-(i) Alternating current, single phase, 50 c/s, 230 volts, between phase and neutral (ii) Alternating current, 3 phase, 50 c/s, 400 volts, between phases and 230 volts between phase and neutral (b) High Tension Supply.- Alternating current, 3 phase, 50 c/s, 11/13.2/33 k.v depending upon the voltage available in the area″

Clause 3.02 provides for classification of supply. Clause 3.02(c) relates to ″H.T Supply, 3 phase, 50 c/s,11/13.2 K.V available in the locality.- All installations with a contract Demand of 50K.W/59 K.V.A and above up to and inclusive of 2000 K.V.A.

Since the power requirement of the Appellant is 990 K.V.A, he is liable to be supplied at 11 K.V.A as per Clause 3.02 (c) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka..

In the present case, the Appellant has availed 990 K.V.A power and, necessarily, he has to be arranged power on H.T network.

Extract of Tariff Order passed by KERC during the year 2005 in relation to L.T-7 reads as follows.

Tariff Schedule L.T-7

Applicable to Temporary power supply of all categories

RATE SCHEDULE

Less than 67 HP	***Energy charge at 600 paise per unit subject to a weekly minimum of Rs.150 per kW of the sanctioned load.***
67 HP and above	
Fixed Charges	***Rs.200/HP/month***
Energy Charge	***600 paid per unit (weekly minimum of Rs.150 per kW is not applicable***

It is clear from the Rate Schedule (above) that KERC had intended to cover temporary power supply exceeding 67 HP under all categories. The 2nd Respondent in the impugned order has clearly brought out these facts which reads ***"The argument of the learned Counsel of the complainant that there is no provision for billing H.T installation under L.T supply cannot be considered, since the sole purpose of availing power supply to an extent of 990 K.V.A is for the construction and though 990 K.V.A is H.T as per Clause 3.02(a) under classification of supply (means arranging power supply on H.T Network) billing for temporary supply above 67 HP should be L.T-7 as per tariff order 2005. There is no provision in Tariff Order 2005 to bill temporary HT installations under HT Tariff."*** This clearly sums up the intent of KERC Tariff Order 2005.

Clause 3.04 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka provides for re-classification of consumer and which says ***"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."***

The Assistant Law officer, BESCOM during the course of his arguments, clarified that the Asst Executive Engineer (E), Devanahalli Sub-Division had issued a notice making a short claims for Rs.95,86,451/- after the internal audit staff had pointed out wrong classification of tariff schedule in relation to the Appellant by giving 7 days time to reply and appellant having replied on 2nd January 2009 and one more letter on 30th September 2010 had been issued to pay the amount. This clarifies compliance of clause 3.04 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka by BESCOM before reclassification of the Appellant.

From the above discussions, it is clear that the 2nd Respondent has passed just orders keeping in mind the relevant provisions of various Acts and Rules which were in vogue during the relevant period in relation to power supply. Hence, this authority does not see any strong grounds to interfere with the impugned order of the 2nd Respondent. However, it has to be pointed out that the 2nd Respondent in its order has remarked that ***"since this involves huge revenue, action has to be taken on the concerned officials who have sanctioned power supply for construction purposes duly mis-classifying the Tariff. They have not discharged their legitimate duties."*** This needs to be looked into by the concerned authorities because the Appellant has also complained that no action has been taken against the erring officials."

In the light of the above, I proceed to pass the following order.

ORDER

The impugned order passed by the CGRF, Bangalore (2nd Respondent) vide No. CGRF/10/2010/1035-42 dated 4th September 2010 **is upheld and consequently, the appeal fails.**

(B.R.Jayaramaraje Urs)
Electricity Ombudsman

1. M/s.Larsen & Toubro Limited, ECC Division Project Manager, Project Site, Bangalore International Airport, (Sy.No.12) Bettakote Village, Devanahalli Taluk, Bangalore.

2. Consumer Grievance Redressal Forum, BESCOM Corporate Office, K.R.Circle, Bangalore.

3. The Asst.Executive Engineer(Ele), O & M Sub Division, BESCOM, Devanahalli Taluk, Bangalore

4. The Managing Director, BESCOM Corporate Office, K.R.Circle, Bangalore.

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