



D-537

## BEFORE THE ELECTRICITY OMBUDSMAN

9/2,6th Floor, Mahalakshmi Chambers, M.G Road,Bangalore-560 001

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

Case No OMB/B/G-216/2015

Dated the 22<sup>nd</sup> July 2015

M/s. Gopalan Grandeur Resident  
Welfare Association,  
189/1,Hoody Village,  
Brook Field Road,  
Bangalore-560048

... Appellant

**(By Sri M.A.Delvi, Advocate)**

V/s

1. The Assistant Executive Engineer(EI)  
E-4 sub-Division, BESCO, Mahadevapura,  
Bangalore – 560 048.

**(Party in person)**

2. The chairperson,  
CGRF, Office of the Superintending  
Engineer, BESCO West Circle,  
05,3rd stage, Bhimajyoti HBCS  
Layout, Next to chord hospital,  
Basaveshwara Nagar,  
Bangalore-560079

.... Respondents

\*\*\*\*\*

1. This is an appeal under clause 21.02 of KERC (CGRF & Ombudsman) Regulations, 2004 against the order passed by the CGRF, Bangalore Urban District, Bangalore(hereinafter referred to as the 2nd Respondent) vide order No CGRF/Chairman/WC/7143-47 dated 11.03.2015 in relation to complaint filed by the Appellant Residents' Welfare Association against issue of back billing for Rs,5,57,688/- on grounds misuse of power. Aggrieved by the orders passed by the CGRF, the Residents' welfare Association has submitted its case as under:

- (i) Gopalan Grandeur is a Residential Complex consisting of 560 numbers of individually metered flats. For the purposes of providing electricity to common area, an independent meter has been provided. One such meter provided to the common area facility was M-S 4 EEH 34248. This meter was connected to water supply, Community Hall, Sports and Gymnasium facility. This installation was given service on 18.03.2010 for a connected load of 21 HP+5 kW and was classified under LT-2(a) tariff schedule(domestic). There was no dispute with BESCO.
- (ii) These loads are termed as common area load and have exhaustively stated at page 37.This complex is 100% residential. Hence, it was wrong to suggest that it falls under

clause 42.02 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka because the 1st Respondent himself classified the installation as coming under LT-2(a) tariff schedule at the time of extending service to the installation.

- (iii) The installation was inspected by the jurisdictional Junior Engineer of the electrical Sub-Division on 28.12.2013 and he found fault with the community Hall, Office, Gymnasium and sports Room. The Junior Engineer calculated the load of these facilities at 11.20 kW (out of the total load of 21 HP+5kW).
  
- (iv) The Sub-Division raised back billing for Rs.5,57,688/- vide dated 06.02.2014. In the provisional Bill issued by the Sub-Divisional Officer, he has failed to call upon the Appellant Residents' welfare Association to file necessary objections or mentioned any reason to classify these facilities attracting a different tariff. Straight away he directed the appellant to pay Rs. 5,57,688/- within 30 days. Though, no objections were called, but yet the Appellant Residents' Welfare Association filed objections against the so called provisional demand on 05.03.2014 and subsequently it was followed by another objection dated 1.02.2014. No orders were passed on the objections filed by the Appellant Residents' welfare Association.

- (v) The Appellant Residents' Welfare Association is not misusing any of the facilities nor extended the facilities to outsiders. This is a gated community with sufficient security. Outsiders cannot enter the apartment. Hence, this cannot be treated as commercial.
- (vi) Further, during the month of July 2014, the back billing charges were found included in the regular bill without affording any opportunity to the Appellant Residents' welfare Association to file its objections, if any. The 1st Respondent passed orders, without taking into consideration objections filed by the Appellant Residents' welfare Association.

2. The Respondent's comments were called vide this office letter No. 216/2015/D-510 dated 18.05.2015.

3. In response to the letter, the AEE(EI) filed his statement of objections vide his letter No AEE/E/AE (T)14-15/510/19-06.2015.

4. The 1st Respondent, in his objection admitted having serviced the installation on 18.03.2010 vide No. MS4 EEH 3428 under LT-2(a) tariff. Further, confirmed the Junior engineer visited the apartment dated 28.12.2013 and finding the Appellant Residents' Welfare Association using 11.20 kW power for commercial purposes i.e

Community Hall, Office, Gym, Sports Room, etc., which attracted LT-3 tariff. Based on this report and also after verification of dossier of the appellant Residents' Welfare Association, having issued a Provisional Demand notice dated 06.02.2014 to the Residents' welfare Association a back billing for Rs. 5,57,688/- for misuse of tariff for a period of 12 months as per clause 42.02 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. In response to this notice, the appellant Residents' welfare Association having filed objection dated 05.03.2014 denying use of power for commercial purposes. Further having considered the objections filed by the Appellant Residents' Welfare Association and also report of the Junior Engineer and other available documents and passed final assessment orders confirming the earlier provisional assessment orders.

5. The 1st respondent added that this authority (Ombudsman) had no jurisdiction to deal with the appeal as it fell under the category of misuse of power i.e from LT-2(a) to LT-3 tariff and further the Appellant Residents' welfare association had approached CGRF and CGRF after hearing the parties, passed orders dismissing the complaint on the grounds of lack of jurisdiction.

6. Both parties were informed vide letter No OMB/B/G-216/2015/523 dated 25.06.2015 regarding availability of Sub Regulation 20 of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004, which both parties have not availed

this opportunity. Hence, I am proceeding to pass an order in this matter.

7. The case was taken up for hearing on 09.07.2015. The Appellant Residents' Welfare Association was represented by its authorised Representative Viz, Shri Delvi. The 1st Respondent Shri M.M.Sali, AEE (EI) personally appeared and advanced his defence arguments. Arguments were concluded from both sides on the same day.

8. During the hearing, both the Appellant Residents' Welfare Association and the 1st Respondent reiterated the submissions made in the appeal memo and statement of objections respectively.

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

(1) whether the 1st Respondent has followed Regulation 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka while making supplementary claims?

(2) Whether CGRF is right in dismissing the complaint straight away on the grounds that the case fell under clause 42.02 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka without going into the merits whether the use of power for common area facilities like water Supply, community Hall and sports attracts LT-3 tariff?

10. In order to answer the first question, we will have to see the provisional demand notice issued by the 1st respondent dated 06.02.2014. Provisional Demand Notice looks like final assessment orders as the 1st Respondent straight away directs the appellant to pay Rs.5,57,688/- and further in the same notice he calls upon the Appellant Residents' welfare Association to file objection, if any, within seven days. 1st Respondent directing the Appellant Residents' Welfare Association to pay an amount of Rs.5,57,688/- in the provisional assessment order amounts to coming to judgement before hand. As per clause 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka *"For preferring the supplemental claims, the License shall serve a provisional assessment order with 15 days' notice to the consumer to file his objections, if any, against the provisional order on account of faulty meter or short claims caused to erroneous billing and obtain his reply. After considering the objections of the consumer, the Licensee shall issue a final order. The consumer shall be intimated to make the payment within 15 days of the date of intimation, failing which, the power supply to the installation shall be disconnected and such amount shall be deemed to be arrears of electricity charges. The licensee shall indicate in the final order, the provisions of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004."* In other words, the Licensee as per clause 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka has to first pass provisional Assessment Order calling upon the consumer to file objections, if any, and after obtaining replies and after considering the

consumer's objection if any, shall issue the final assessment order. In the present case, the Licensee has failed to wait till the consumer filed his objections and seen to have come to a conclusion before the consumer filed objections that the consumer was liable to pay certain amount. AEE (EI) is found to have prejudged the issue and formed opinion before passing final assessment orders. Since the provisional orders is not in consonance with clause 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, it is liable to be set aside.

11. As for as second question is concerned, the CGRF is seen to have passed orders dismissing the complaint on the grounds that it did not get jurisdiction as the case fell under clause 42.02 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka without really going into the matter whether the case really falls under section 126 of the Electricity Act, 2003, and clause 42.02 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. The CGRF being a grievance Redressal Forum, ought to have examined the claims of the consumer and ought to have assigned reasons why the case did not come under its jurisdiction when the consumer claimed that it had not misused power as the Licensee himself had provided a separate meter for common facilities ( M.S 4 EEH 34248) like water facility, sports, Community Hall and had been using power within the sanctioned connected load of 21 HP+ 5kW under LT-2(a) tariff schedule which was classified by the Licensee at the time of extending service to the



installation. This shows that CGRF has failed to exercise its jurisdiction and not taken any pains to understand the case and seen to have passed a perfunctory orders without assigning reasons why it lacked jurisdiction. The impugned order is not a reasoned order and hence liable to be set aside.

12. In the circumstances discussed above, it becomes clear that the 1st Respondent has not followed clause 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka while preferring supplementary claims and further the Second Respondent has failed to exercise its jurisdiction and passed perfunctory orders claiming it lacked jurisdiction when it ought to have assumed jurisdiction and passed orders on merit. Hence, the following order:

### **ORDER**

For the foregoing reasons, the impugned orders of CGRF is set aside. The case is remanded to the 1st respondent to pass fresh orders following clause 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and after considering the objections filed by the Appellant Residents' Welfare Association.

In the result, the appeal succeeds.



**(B.R Jayaramaraje Urs)**  
**Electricity Ombudsman**

To :

1. Sri M.A.Delvi, Advocate, No.8, 3<sup>rd</sup> Cross, Pottery Town, Bangalore – 560 046.
2. The Assistant Executive Engineer(EI), E-4 sub-Division, BESCO, Mahadevapura, Bangalore – 560 048.
3. The chairperson, CGRF, Office of the Superintending Engineer, BESCO West Circle, 05,3rd stage, Bhimajyoti HBCS Layout, Next to Chord Road Hospital, Basaveshwara Nagar, Bangalore-560 079
4. Managing Directors of ESCOMs.
5. PS to Hon. Chairman, KERC
6. PS to Hon'ble Member (A), KERC
7. PS to Hon'ble Member (M), KERC
8. Secretary, KERC

\*\*\*\*\*