



**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/G/G-170/2014/388**

**Dated 11.07.2014**

**M/s.Karanja Industries Private Limited,**  
Akkamahadevi Colony,  
BIDAR - 585401

**(Represented by Sri M.G.Prabhakar -  
Authorised Representative)**

**.. Appellant**

**Vs**

1. Asst.Executive Engineer,  
O & M Sub-Division,  
GESCOM  
Humnabad

**Bidar District**

**(Represented by Shri Ravindra Reddy, Advocate)**

2. Consumer Grievances Redressal Forum (C.G.R.F)

GESCOM Corporate Office,  
Opp Hotel Parivar, Main Road,

**GULBARGA**

**.. Respondents**

1. This is an appeal under Clause 21.02 of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004 against the order passed by the Consumer Grievance Redressal Forum, GESCOM, Gulbarga (hereinafter referred to as the 2<sup>nd</sup> Respondent) vide No 7001-15 dated 02.05.2013 relating to the levy of Rs.41,794/- Electricity tax on interest for belated payment under the Karnataka Electricity

(Taxation on consumption) Act, 1959 by the Assistant Executive Engineer(EI), O &M Sub-Division, GESCOM, Humanabad, Bidar District. Aggrieved by the order passed by the 2<sup>nd</sup> Respondent, the Appellant has submitted his case as under:

2. The Appellant is a Private Limited Company incorporated under the Companies Act 1956. The Appellant Company has availed HT power supply to its installations bearing Numbers RR HKHT-4 & 5. The Appellant has been promptly settling monthly power bills without any default. When things stood at this, the Assistant Executive Engineer (EI) O & M Sub-division, Humnabad, Bidar District started levying Electricity tax on the interest paid for the belated payment of energy charges which is being objected to by the Appellant from time to time but continued to pay such taxes as his plea not to charge electricity tax on the interest portion of the bill went unheeded.

3. Under The Karnataka Electricity (Taxation on consumption) Act, 1959 and subsequent amendment vide Notification No. 17 dated 31.03.2003, consumers of electricity are liable to pay to the State Government an ad valorem tax @ 5% on the electricity charges (excluding arrears). However, in the present case, GESCOM has levied Electricity Tax on the interest levied for belated payment. The Appellant clarified GESCOM that the consumers were not liable to pay electricity tax on the interest collected for the belated payment and requested for refund of the excess amount collected in the form of electricity tax amounting to Rs.41,794/-. In spite of several correspondences, the 1<sup>st</sup> Respondent refused to refund the excess amount collected and reiterated the Appellant's liability to pay the Electricity Tax on interest. The 1<sup>st</sup> Respondent failed to explain to the consumer how he was liable to pay electricity tax on the interest. On the other hand, consumer explained to GESCOM how he is not liable to pay electricity tax on the interest paid for belated payments. Since there was no positive response from the 1<sup>st</sup> Respondent, the Appellant challenged the decision of the 1<sup>st</sup> Respondent before the 2<sup>nd</sup> Respondent. The 2<sup>nd</sup> Respondent, after hearing the matter, passed the impugned order dismissing the complaint. Hence, the Appellant prayed this Authority to set aside the order passed

by the 2<sup>nd</sup> Respondent and to direct the 1<sup>st</sup> Respondent to refund the excess amount collected by way of electricity tax on the interest charges.

4. The 1<sup>st</sup> respondent's comments were called vide letter No OMG/G/G-170/2014/328 dated 18.02.2014. The 1<sup>st</sup> Respondent filed his statement of objections vide letter No HBD/AEE/O&M/SA/13-14/2686-89 dated 01.03.2014.

5. The 1<sup>st</sup> Respondent, in his statement of objections, submitted that GESCOM claimed electricity tax @ 5% on the interest charged (excluding arrears) for delayed payments as per Notification No 17 dated 31.03.2003 of Government of Karnataka. The 1<sup>st</sup> Respondent denied having failed to respond to the letters addressed by the Appellant in this behalf and stated that the 1<sup>st</sup> Respondent tried to convince the Appellant orally several times and even issued written communication in this regard and, hence, question of not responding to the Appellant did not arise. The Distribution Licensee had claimed electricity tax @ 5% on the interest collected for belated payment as per the Karnataka Electricity (Taxation on Consumption) Act, 1959 and further amendment vide Notification 17 dated 31.03.2003 of the Government of Karnataka. As per the amendment, ad valorem tax at 5% on the electricity charges is payable (excluding arrears) by all the consumers except consumers under agricultural (IP sets up to and inclusive of 10 HP) and BJ/KJ. Ad valorem Tax had been levied and collected as per law and, hence, question of refund did not arise. Hence, prayed this Authority to dismiss the appeal and to confirm the order passed by the 2<sup>nd</sup> Respondent

6. The case was taken up for hearing on 05.05.2014. On behalf of the Appellant, Shri M.G.Prabhakar, Authorised Representative appeared and advanced his arguments and, on behalf of the 1<sup>st</sup> Respondent, Sri Ravindra Reddy, Advocate appeared and put forth his arguments.

7. The Authorised Representative of the Appellant argued that as per notification No 17 dated 31.03.2003 of Government of Karnataka, Distribution Licensee cannot

levy Ad valorem Tax @ 5% on the arrears nor on the interest paid for the belated payment. The Ad valorem tax @ 5% could be levied on the electricity charges payable (excluding arrears) on electricity sold or consumed by any consumer and Distribution Licensee cannot levy electricity tax on interest. The Distribution Licensee issues Electricity bill to the consumer based on electricity consumed which will be in terms of units. Earlier, electricity tax was levied per unit at the prescribed rates. For the first time in 2003 by an amendment to the 1959 Act Ad valorem tax was introduced. As per 2003 amendment, the State Government could levy 5% Ad valorem Tax on the electricity charges payable. In the present case, GESCOM has not only levied electricity tax on the electricity charges payable, but also on the interest paid for the belated payment. GESCOM cannot levy electricity tax on the interest component and, hence, the Appellant is not liable to pay the electricity tax on interest.

8. Further, referring to the Circular issued by the M.D, GESCOM, the Authorised Representative of the Appellant submitted that Circular had been issued based on the clarification issued by the Joint Secretary, Energy Department, Government of Karnataka vide letter No DE 29 PSR 2003/239 dated 03.04.2003. This letter is ultra vires as the Joint Secretary had no powers to issue clarification on what constitutes electricity charges and that electricity charges includes interest actually when it is not provided in the Act. Hence, GESCOM could not have levied electricity tax on interest based on such letter. The joint secretary, in his letter dated 03.04.2003 vide NO DE 29 PSR 2003/239, has clarified that interest paid for belated payment also to be treated as part of electricity charges payable and the consumer is liable to pay electricity tax on the interest component. The Karnataka Electricity (Taxation on Consumption) Act, 1959 has provided for levy of electricity tax on the electricity consumed which is supplied in terms of units. Initially. electricity tax was levied per unit at the prescribed rates and, later in 2003 by amending the existing Act, Government introduced Ad valorem tax under which the consumer was made liable to pay electricity tax based on the electricity charges payable but interest was not included in the electricity charges payable and, hence, levy of electricity tax on

interest is illegal and, therefore, levy; of tax is liable to be set aside. Hence, The Authorised Representative prayed this Authority to issue directions to the Distribution Licensee to refund the Electricity Tax collected on interest.

9. The Advocate for the 1<sup>st</sup> Respondent argued that GESCOM had levied Electricity Tax on the interest in pursuance of the clarification issued by the Joint Secretary to Government (Reforms), Energy Department, Government of Karnataka Bangalore, vide letter No D.E 29 PSR 2003/239, dated 3.04.2003. The Joint Secretary clarified that the **"Total Electricity Charges payable means the total of all kinds of charges payable by the consumer including charges incidental to supply of electricity and indicated in the electricity bill issued to the consumer consisting of fixed charges/Demand Charges, Energy Charges, Power Factor Penalty on excess demand/Loads, back billing charges, Audit short Claims, interest, Fuel Escalation Charges less rebate (except arrears as it includes the tax component)."** The letter clarifies that electricity charges includes interest and, hence, levy of 5% Ad valorem Tax is in order and as such the Appellant Company is liable to pay electricity tax on interest. In view of this clarification, the Advocate for the 1<sup>st</sup> Respondent prayed this Authority to confirm the order passed by the 2<sup>nd</sup> Respondent and to dismiss the appeal.

10. Both parties were informed vide letter No.OMB/G/G-170/2014/341 dated 11.04.2014 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.

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

### ***1) What constitutes electricity charges?***

**2) Whether GESCOM is right in levying advalorem tax @ 5% on interest payable for the belated payment based on Joint Secretary's letter (Government of Karnataka) dated 3.04.2003?**

**3) Whether the Joint Secretary has got powers to clarify what constitutes electricity charges and whether the clarification issued is as per 2003 Karnataka Electricity (Taxation on Consumption) Amended Act?**

12. In order to answer the above questions, first we have to refer to section 3 of The Karnataka Electricity (Taxation on consumption) Act, 1959 which states **"Subject to the provisions of this Act, there shall be levied and paid to the state Government electricity tax on ad valorem basis tax (here in after referred to as "electricity tax") at five percent on the electricity charges payable (excluding arrears) by all the consumers except consumers under agricultural (irrigation pump sets up to and inclusive of Ten Horse Power), Bagya Jyoti and Kutir Jyoti categories"**. The Advocate for the 1<sup>st</sup> Respondent relied on the letter issued by the Joint Secretary to Government of Karnataka dated 03.04.2003 for levy of electricity tax on interest. The Advocate for the 1<sup>st</sup> Respondent has not produced the letter issued by the Joint Secretary. However, he has produced only the Circular issued by the Managing Director, GESCOM which contains the extracts of the letter issued by the Joint Secretary, Government of Karnataka. The extracts of the letter states that **"Total electricity charges payable means the total of all kinds of charges payable by the consumer including charges incidental to supply of electricity and indicated in the electricity bill issued to the consumer consisting of Fixed charges/Demand Charges, Energy Charges Power factor penalty on excess demand/loads, back billing charges, Audit short Claims, interest, Fuel escalation charges less rebates (except arrears as it already includes the tax component)"**.

13. The Authorised Representative of the Appellant argued that the Joint Secretary, (Reforms) Energy Department, Government of Karnataka is not competent to issue such clarification when it is not provided in the Act. This argument is well founded because law making is the domain of the legislature and the Karnataka Electricity (Taxation on Consumption) Act, 1959 was enacted by the legislature in the year 1959 and the same legislature amended Section 3 providing for levy of Ad valorem Tax. Section 3 stated that **"Subject to the provisions of this Act there shall be levied and paid to the State Government, Ad valorem tax (herein after referred to as "Electricity Tax") at five percent on the electricity charges payable (excluding arrears) by all the consumers except consumers under agricultural (irrigation pump set up to and inclusive of Ten Horse Power), Baghya Jyothi and Kutir Jyothi categories"**. The Joint Secretary's letter clarifying interest as part of electricity charges payable prima facie is found to be ultra vires as he has no powers to issue such clarification in the form of a letter without amending the Act which power obviously vested with the legislature. There is a substance in the arguments of the Authorised Representative of the Appellant that the letter dated 03.04.03 issued by the Joint Secretary is a mere letter and has no force of law. The arguments of the 1<sup>st</sup> Respondent that GESCOM had followed the letter issued by the Joint Secretary and levied electricity tax on interest cannot be accepted as letter has no validity in the eyes of law and unenforceable against the Appellant. Hence, the arguments of the 1<sup>st</sup> Respondent are rejected as there is no merit in such arguments.

14. Now, let us try to understand what is electricity charges payable means without reference to the letter issued by the Joint Secretary and with reference to the Karnataka Electricity (Taxation on Consumption) Act, 1959. The preamble of the Karnataka Electricity (Taxation on Consumption) Act, 1959 states that **"An Act to provide for the levy of tax on the consumption of the electrical energy in the State of Karnataka"**. Further, Section 3 of the Karnataka Electricity (Taxation on consumption) Act, 1959 read with amendment issued in 2003 states that the Ad valorem tax of 5% can be charged on electricity charges payable (excluding

arrears). Plain reading of the preamble and Section 3 of the Act gives the meaning that the electricity tax can be levied only against the energy sold and consumed by the consumer which is supplied in terms of units. Viewed from this background, electricity charges payable means price payable by a consumer for energy consumed. Energy is supplied in terms of units and also price fixed per unit by the Licensee for such supply. The Distribution Licensee under the Karnataka Electricity (Taxation on Consumption) Act, 1959 and subsequent amendment 2003 is mandated to levy Ad valorem Tax on the charges payable on the electricity sold to or consumed by the consumer and has to remit such taxes to the State Government. As per the Karnataka Electricity (Taxation on Consumption) Act, 1959 and further amendment, the Distribution Licensee is required to levy electricity tax at 5% on the electricity sold or consumed by the consumer. Sale amount is fixed per unit by the Licensee and that amount has to be paid by the consumer along with the electricity tax @ 5% and 5% will be on the value of the electricity supplied. This is also called Ad valorem Tax which means levying of tax in proportion to the value of goods. In the present case, goods means electricity and value of the goods means the value of the electricity.

Further reading of Section 3 of the Karnataka Electricity (Taxation on Consumption) Act, 1959 read with 2003 amendments makes it clear that the Legislature had not intended to levy electricity tax on interest. If it were so, it would have provided clearly in the Act. In the absence of such express provision, the Distribution Licensee could not have ventured to levy electricity tax on interest which amounts usurping of Legislature's power. In the present case, the Appellant has objected to the Distribution Licensee levying electricity tax on the interest levied. Interest is not a component of electricity charges payable as it is not explicitly provided in the Act. Interest is a charge on the consumer for belated payment and it cannot be taken as part of electricity charges payable.

15. Further, 2013 amended Act (Karnataka Electricity (Taxation on Consumption) Act, 1959) has defined "Electricity Charges" means the electricity consumption



charges payable by the consumer at the prescribed rates on the units of electricity supplied to such consumer. Further, KERC (Security Deposits) Regulations, 2007 defines "Consumption Charges" means the consumption of electrical energy in kWhrs multiplied by appropriate tariff rates and also includes Demand/ Fixed charges, Fuel Surcharge wherever applicable". In this Regulation, it can be seen that KERC has specifically defined what constitutes consumption charges, but in the Karnataka Electricity (Taxation on Consumption) Act, 1959 and subsequent amendments 2003, specific provision has not been made for levying electricity tax on interest. When it is not provided in the Act, the Distribution Licensee cannot assume what is not provided and resort to levying of electricity taxes on interest. Seen from this back- ground, we can say that the legislation namely Karnataka Electricity (Taxation on Consumption) Act, 1959 including 2003 amendment has not intended the Distribution Licensee to levy 5% electricity tax on the interest payable for the belated payment of electricity charges.

16. From the above discussions, following conclusions emerge:

- a) Clarification issued by the Special Officer & Ex officio Joint Secretary to Government (Reforms) Energy Department, Government of Karnataka, Bangalore vide letter No DE 29 PSR 2003/239 dated 03.04.2007 is only a letter and not an amendment to the Karnataka Electricity (Taxation on Consumption) Act, 1959 and, hence, it has no force of law and cannot be enforced against the Appellant.
- b) Even the Karnataka Electricity (Taxation On Consumption) 1959, and amendment made in 2003 has not intended the Distribution Licensee to levy electricity tax on interest payable for the belated payment of electricity charges and there is no express provision intending the Distribution Licensee to levy electricity tax on interest and, hence, levy of Electricity Tax on interest by GESCOM based on Joint Secretary's letter virtually becomes ultra vires. Hence, the following order:

**ORDER**

- 1) For the foregoing reasons, electricity tax levied on interest amounting to Rs.41,794/- is set aside.
- 2) GESCOM is directed to refund Rs.41,794/- to the Appellant Company or to adjust the amount against the future energy bills of the Appellant Company within one month from the passing of this order. Further, GESCOM to send compliance to this Authority within one month.

17. In the result, **appeal succeeds.**



(B.R Jayaramaraje Urs)  
Electricity ombudsman

1. M/s.Karanja Industries Private Limited, Akkamahadevi Colony, Bidar.
2. Assistant Executive Engineer, O & M Sub-Division, GESCOM, Humnabad, Bidar District.
3. Consumer Grievance Redressal Forum, GESCOM Corporate Office, Opp. Hotel Parivar, Main Road, Gulbarga
4. Managing Directors of all ESCOMs.
5. PS to Hon. Chairman, KERC
6. PS to Hon. Member (A), KERC
7. PS to Hon. Member (M), KERC
8. PS to Secretary, KERC