

D-511



## Before the Electricity Ombudsman

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

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

**Case No.OMB/B/G-211/2015**

**Dated the 25<sup>th</sup> May, 2015**

Smt Leela Lingappa

No 52, Anjaneya Temple Street,  
Cubbonpet,

**Bangalore-560002**

**(Represented by Sri G.B. Revanaradhya,  
Advocate)**

.. **Appellant**

V/S

1. The Assistant Executive Engineer (EI)

O&M W-5 Sub-Division

BESCOM, 2nd Floor

Mysugar Building,

J.C Road,

Bangalore-560002

2. The Chairperson

CGRF, Office of the

Superintending Engineer,

BESCOM, West Circle, CA Site No.05,

3<sup>rd</sup> Stage, Bhimajyothi HBCS layout

Basaveshwaranagar,

**Bangalore-560079**

.. **Respondents**

1. This is an appeal under Clause 21.02 of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004 against the orders passed by the Consumer Grievance Redressal Forum, BESCO, Bangalore Urban District, Bangalore (herein referred to as the 2nd Respondent) vide No. CGRF/50/2014-15/27.01.2015 dated 27.01.2015 in respect of the appellant's complaint regarding BESCO'S back billing for Rs.55,790/ on the ground of alleged misuse of tariff. The second Respondent declined to interfere in the order passed by the 1st Respondent. Aggrieved by the order passed by the 2nd Respondent, the appellant has submitted his case as under:

2. The appellant is a registered electricity consumer of BESCO. Installation bearing No. 1 W 1P2272 stands in the name of S. Lingappa who is no more. The appellant was sanctioned 8HP+ 2kw power for the purpose of reeling & twisting. After the demise of S. Lingappa, his son L. Girish continued the family occupation, but could not with stand tough competition from North India. On account of this, he closed the unit and rented out the premises to a North Indian, who is residing in the premises with his family and doing silver work on job basis against orders.

3. Further, Mr. Girish suffered a paralytic stroke during January 2014 and was in NIMHANS for more than 3months. In the meanwhile, the Electricity Sub-Division included Rs.55,790/- back billing charges in the monthly bill of January 2014. The consumer enquired about the back billing charges during April 2014 and the office informed that the installation had been back billed as the tenant had been using the power for commercial purposes. She was also informed that the office had sent a letter through a line man. But the appellant had not

received any letter. However, a copy of the letter was given to the appellant. After wards, she met the AEE (EI), Mr. Pramod Kumar and he advised her to file objection regarding back billing. Accordingly, the appellant filed objections on 24.04.2014 and requested the AEE (EI) to visit the premises. He inspected the premises and confirmed himself that the consumer was not using power for any commercial purposes. He also took photographs of the unit and also ailing Mr. Girish. The AEE (EI) informed the consumer that the back billing was not in order and hence the same would be cancelled. Unfortunately, he was transferred and the present incumbent advised the consumer to file a complaint before CGRF. Accordingly, a complaint was filed before CGRF and the CGRF passed an order on 31.03.2015 duly informing the consumer that the Forum had no jurisdiction and hence to submit an appeal before the appropriate appellate authority. Following this, the consumer filed an appeal before this authority on 14.04.2015 for cancellation of back billing and to continue to bill the installation under LT-5 tariff.

4. The 1st Respondent's comments were called vide letter No. OMB/B/G-211/2015/D-493 dated 20.04.2015.

5. The 1st Respondent, in his statement of objections admitted the appellant having been sanctioned 8HP+2kw power for twisting and reeling machineries under LT-5 tariff and further the AEE (EI) LT Rating BMAZ having conducted inspection of appellant's installation dated 05.11.2013 and having reported the misuse of LT-5 tariff by the appellant and having issued a demand notice to the appellant dated 23.01.2014 for Rs.55,790/-.

6. The 1st Respondent further submitted that the consumer had stated that she had filed objections before the Executive Engineer (EI) Vidhana Soudha Division, BESCOM on 24.04.2014 to the said demand notice, but his office had not received any letter from the EE (EI), Vidhana Soudha Division. The aggrieved consumer had filed a complaint before the CGRF and the same had been rejected by CGRF for want of jurisdiction as the case fell under Section 126 of the Electricity Act, 2003 and hence, the appellant had filed this appeal.

7. The case was taken up for hearing on 11.05.2015. On behalf of the appellant, Shri Revanaradhya, authorised representative appeared and put forth his arguments. On behalf of BESCOM, the AEE (EI), West, 5th Sub-Division present and advanced his arguments. During the hearing, both parties reiterated the submissions made in the appeal memo and Statement of Objection respectively. Both parties were informed vide letter No. OMB/B/211/2015/500 dated 30.04.2015 regarding availability of sub-regulation 1 of Regulation 20 of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004 which provides for settlement by agreement through conciliation and mediation. However, parties have not filed any memo in this behalf. Hence, I am proceeding to pass formal order in the matter.

8. Having regard to the contending position of the parties, issues that arise for our consideration are:

- a) whether the appellant has misused power as alleged by the 1st Respondent?
- b) whether the Licensee's categorisation of the appellant under LT-3 tariff schedule and billing under that category is correct?

- c) whether the case falls under erroneous classification of tariff schedule under Clause 3.04 of the Conditions of Supply of Electricity of distribution Licensee in the State of Karnataka?
- d) whether CGRF has got jurisdiction to deal with cases falling under erroneous classification of tariff schedule under Clause 3.04 of the Conditions of Supply of Electricity of Distribution Licensee in the State of Karnataka?
- e) whether the CGRF is right in dismissing the complaint of the appellant on the grounds of lack of jurisdiction?

9. In the instant case, the appellant appears to have received the demand in the monthly bill of April 2014 for Rs.56,790/-. From the records, it is not clear how the AEE (EI) raised the demand. It is also not clear whether he has raised the demand on the basis of any inspection report. It is evident from the records that the appellant received a demand from the AEE (EI)'s office and following this, the appellant approached AEE (EI), Shri Pramod Kumar for withdrawal of demand notice on the plea that he had not misused any tariff. Shri Pramod Kumar after repeated request from the appellant, appeared to have visited the premises and whether he was satisfied that the appellant had not been misusing the tariff is not clear. But the appellant submits that Shri Pramod Kumar had promised that he would withdraw back billing demand as the appellant had not been carrying out any commercial activity in the premises. Subsequently, he was transferred and his successor advised the appellant to file a complaint before the CGRF. It is clear from the demand notice that the 1st Respondent has back billed on the ground that the appellant had misused LT-5 tariff for doing silver work on job basis when the appellant had been sanctioned power for reeling and twisting machineries. The

AEE (EI) has categorised appellant's activity namely doing silver work on job basis under LT-3 tariff. Perusal of KERC tariff order discloses that the appellant does not come under LT-3 tariff schedule. In fact the appellant does come under LT-5 tariff schedule i.e. Gold/Silver ornament manufacturing Units. In case, the Licensee wanted to assign LT-3 tariff to Silver/Gold manufacturing Units, the Licensee should have approached KERC for a separate tariff to such category of activities. Instead of taking up the matter with the Commission, Licensee is found to have taken up the responsibility of assigning LT-3 tariff to the appellant itself. Under the Electricity Act, 2003 such powers are vested with the Commission. Assigning LT-3 tariff to the silver smithy when such activity is not included under the LT-3 tariff schedule of KERC Tariff Order, amounts to usurping Commission's power and jurisdiction by the Licensee. In the present case, the Licensee is found to have arrogated the powers of the Commission and assigned LT-3 tariff to the appellant even though the silver smithy is not included in LT-3 tariff schedule and appear to have back billed at twice the LT-3 tariff applicable for misuse of power for a period of 12 months for Rs.55,790/-.

10. Under Clause 42.02 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka "If at any time, the energy supplied under one method of charging is misused for purpose for which a higher method of charging is in force, the Assessing Officer shall assess the quantum of energy and difference in fixed charges for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of power has taken place cannot be ascertained, such period shall be limited to a period of 12 months immediately preceding the date of inspection and charge @ two times the

tariff applicable to the purpose for which energy is misused". In other words, Clause 42.02 of the Conditions of Supply of Electricity of Distribution Licensee in the State of Karnataka provides for charging two times the tariff applicable to the purposes for which the energy is misused. To say that a person has misused tariff, there should be two tariffs: a) One category carrying lower tariff and b) another category carrying higher tariff. When a consumer who is not eligible to avail power under a category which carries lower tariff and liable to be charged higher tariff category if found using power under a category which carries lower tariff fraudulently, amounts to misuse of power.

11. It is the case of the 1st Respondent that the appellant has misused power sanctioned for reeling and twisting machinery for doing silver work on job basis. Perusal of Tariff Order confirms Gold and Silver manufacturing Units coming under LT-5 tariff schedule.

12. In the instant case, the appellant's activity namely, doing silver work on job basis comes under LT-5 tariff schedule but at the same time he does not come under LT-3 tariff schedule as silver smithy is not included in LT-3 tariff schedule.

13. It is undisputed that the 1st Respondent has reclassified the appellant from LT-5 tariff schedule. Under Clause 3.04 of the Condition of Supply of Electricity of Distribution Licensees in the State of Karnataka which reads "If it is found that a consumer has been classified under a particular tariff category erroneously, the Engineer of the Licensee may classify 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. If the consumer does not take steps within the time indicated in the notice to execute a fresh agreement duly observing the required conditions, the Engineer, may disconnect the supply of power after issuing a clear fifteen days notice and after considering his explanation, if any."

14. In the instant case, the 1st Respondent, after visiting the appellant's premises appear to have issued back bill for Rs.55,790/- on the ground that the appellant had misused LT-5 tariff for silver smithy which was sanctioned for reeling & twisting machineries. Even if it is assumed that the appellant's tenant is not residing in the premises and doing only silver work on job basis, it cannot be said that silver work on job basis strictly comes under LT-3 tariff Schedule (Commercial) and, hence, he becomes liable to pay back billing charges @ twice the rate applicable to LT-3 tariff.

15. In the present case, the 1st Respondent appears to have assumed that the appellant comes under LT-3 tariff and based on this assumption found to have levied penalty @ twice the LT-3 tariff applicable for a period of 12 months for alleged misuse of power. To say that a consumer has misused tariff, there shall be two tariff schedules i.e. one carrying lower tariff and another carrying higher tariff. Further, when a consumer who is liable to be charged under higher tariff schedule if found paying charges @ applicable to a lower tariff category amounts to misuse of power. In the present case, the 1st Respondent has not shown from the tariff order that the silvery smithy (job work) falls under higher tariff schedule i.e. LT-3 tariff schedule. When there is no higher tariff assigned to silver smithy in the Tariff Order, the 1st Respondent without having powers cannot assign higher tariff schedule to silver smithy and back bill the appellant.



16. The 1st Respondent while reclassifying the appellant under LT-3 tariff Schedule, is found to have not issued any notice or provided 15 days' time to the appellant to execute a fresh agreement. Without following the procedure, the 1st Respondent appears to have assigned LT-3 tariff schedule to the appellant. This amounts to arbitrariness and usurping Commission's powers.

17. In the circumstances discussed above, back billing raised on the assumption that the appellant consumer falls under LT-3 tariff schedule is wrong and incorrect and hence, liable to be set aside. In view of this, Licensee is hereby instructed to collect LT-5 tariff only from the appellant.

18. The 1st Respondent in his written objections has contended that neither CGRF nor the Ombudsman has jurisdiction to deal with matters pertaining to misuse of tariff. In order to find out the veracity of this argument, we have to refer to Clause 2(g) of KERC (CGRF & Ombudsman) Regulations, 2004. This Clause defines "Complaint" means any grievance made by the consumer with regard to supply of electricity by the Licensee, provided that grievance falling within the purview of any of the following provisions of the Act is excluded from the jurisdiction of the Forum:

- a) Unauthorised use of Electricity as provided under Section 126 of the Electricity Act;
- b) Offences and penalties as provided under Section 135 to 139 of the Electricity Act;
- c) Accident in the distribution, supply or use of electricity as provided under Section 161 of the Act.

19. In the instant case, the grievance of the appellant is that although he does not fall under LT-3 tariff Schedule, the Licensee has erroneously classified him under that category for the purposes of charging for the consumption of power.

20. The 1st Respondent's arguments that the appellant's activity falls under LT-3 tariff schedule but used power under LT-5 tariff Schedule amounts to misuse of power and case relating to misuse of tariff does not come under the purview of either CGRF or Ombudsman is without any legal basis. When doing silver work on job basis is not included under LT-3 tariff schedule, question of appellant misusing LT-5 tariff schedule does not arise. As a matter of fact, the action of the Licensee in the instant case amounts to reclassification of consumer under Clause 3.04 of the Conditions of Supply of Electricity of Distribution Licensee in the State of Karnataka. But reclassification is found to have been done without following the procedure laid down under Clause 3.04 of Conditions of Supply of Electricity of Distribution Licensee in the State of Karnataka. Reclassification of consumer comes under the definition "Complaint" under Clause 2(g) of KERC (CGRF & Ombudsman) Regulations, 2004. Hence, CGRF gets jurisdiction to deal with such complaints. CGRF appears to have over looked this aspect and passed orders dismissing the complaint on the wrong assumption that the instant case comes under the ambit of Section 126 of the Electricity Act, 2003 and hence, it does not get jurisdiction.

21. In the circumstances discussed above, the 2nd Respondent certainly gets jurisdiction to decide cases relating to reclassification of consumer and hence,

the 2nd Respondent ought to have assumed jurisdiction and passed orders on merit. Instead, it has dismissed the complaint on the grounds of lack of jurisdiction which is highly objectionable and liable to be set aside.

Hence, the following orders:

#### ORDER

- a) In the circumstances discussed above, the impugned order of CGRF is set aside.
- b) Back billing demand raised by the 1st respondent against the appellant for Rs.55,790/ is set aside.
- c) The 1st respondent is hereby directed to charge the appellant under LT-5 tariff Schedule as the Gold and Silver manufacturing units come under LT-5 Tariff Schedule.

Consequently the appeal succeeds.



(B.R. Jayaramaraje Urs)  
Electricity Ombudsman

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2. Asst. Executive Engineer (EI) O&M W-5 Sub-Division, BESCOM,2nd Floor, Mysugar Building, J.C Road, Bangalore-560002
3. The Chairperson, CGRF, Office of the Superintending Engineer, BESCOM, West Circle, CA Site No.05, 3<sup>rd</sup> Stage, Bhimajyothi HBCS Layout, Basaveshwaranagar, **Bangalore-560079**
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. Secretary, KERC.