



# 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/B/G-187/2014/432**

**Dated 30.10.2014**

Shri R.D.Jayanth Kumar,  
No.24/6, 13<sup>th</sup> Cross,  
Cubbonpet

**BANGALORE-560002**

(R.R.No.W1P 1828)

**(Represented by Sri G.B.Revanaradhya,  
Authorised Representative)**

.. **Appellant**

**Vs**

1. The Asst. Executive Engineer(EI)

O & M W-5 Sub Division,

BESCOM,

Krishi Bhavan, Hudson Circle,

**BANGALORE-560 002**

**(Represented by Sri Vinayaka.K,  
Law Officer, BESCOM, Bangalore)**

2. The Chairperson

Consumer Grievance Redressal Forum

Office of the Superintending Engineer,

BESCOM West Circle,

05, 3<sup>rd</sup> Stage,

Bhimajothi HBCS Layout,

Basaveshwarnagar,

**BANGALORE-560079**

.. **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, BESCO, Bangalore Urban (hereinafter referred to as the 2<sup>nd</sup> Respondent) vide case No CGRF/7/2013-14/12.12.2013/1074-80 dated 28.05.2014 relating to raising of back billing charges by the Assistant Executive Engineer (EI), W-5 Sub Division, BESCO, Bangalore (hereinafter referred to as the 1<sup>st</sup> Respondent) for Rs.44,818/- for the alleged misuse of power under LT-5 tariff in respect of installation bearing W1P-2384. Aggrieved by the order passed by the 2<sup>nd</sup> Respondent, the Appellant has submitted his case as under:

2. The Appellant, Shri R.D.Jayanth Kumar, is the nephew of Shri R.Gnanamurthy. The Appellant's father Shri R.Dhananjaya and Shri R.Gnanamurthy are brothers. The brothers have partitioned their properties but the installation bearing RR No.W1P 1828 continued to be in the name of Shri Gnanamurthy. Now, Shri Dhananjaya, father of the Appellant has expired on 10.04.2014. The installation was sanctioned a load of 7 H.P. and the power was being used for weaving art silk sarees. Installation was being billed under LT-5 tariff schedule. Due to tough competition in the market, the Appellant stopped weaving sarees and rented out the building to a gold smith. The tenant is residing in the house and doing gold smithy on job basis.

3. When things stood at this, the Junior Engineer (EI), O & M Unit inspected the installation on 26.09.2013 and observed that the Appellant had misused electricity sanctioned for weaving sarees for gold smithy and, hence, he was liable to pay the

back billing charges of Rs.44,818/-. Based on this report, the 1<sup>st</sup> Respondent issued a notice to the Appellant vide No.3129 dated 31.10.2013 calling for objections. The Appellant filed his objections on 11.11.2013. Finally, the 1<sup>st</sup> Respondent passed final assessment orders vide No.3295198 dated 22.11.2013 confirming the liability. In the order, the 1<sup>st</sup> Respondent advised the Appellant to approach the 2<sup>nd</sup> Respondent if he was aggrieved by his order.

4. Accordingly, the Appellant approached the 2<sup>nd</sup> Respondent. However, the 2<sup>nd</sup> Respondent has rejected the pleas of the Appellant and advised the Appellant to approach the Appellate Authority under Clause 44 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka though the complaint related to mis-classification of tariff.

5. The 1<sup>st</sup> Respondent has taken decision to back bill the Appellant for alleged misuse of electricity on the basis of the letter issued by the Executive Engineer (EI), Vidhana Soudha. The Executive Engineer (EI), without any basis and without powers, has advised the 1<sup>st</sup> Respondent to bill gold smithy under LT-3 tariff schedule. Hence, prayed this Authority to set aside the orders passed by the 2<sup>nd</sup> Respondent and to direct the 1<sup>st</sup> Respondent to withdraw the back billing demand issued to the Appellant.

6. The 1<sup>st</sup> Respondent in his statement of objections submitted that the installation had been serviced on 28.04.1983 under LT-5 tariff for the purpose of weaving of sarees. Later, on 26.09.2013, the Junior Engineer(EI) O & M Sub-Division inspected the installation and found the consumer using the entire

residential house for gold smithy and not using any portion of the building for residential purposes. Further, the Appellant failed to furnish any proof for having resided in the building and also failed to produce trade license in proof of his activity.

7. He further submitted that before issuing notice, he had consulted the Executive Engineer (EI), Vidhana Soudha, Bangalore on how to classify gold smithy and he had been advised to bill gold smithy under LT-3 tariff schedule and, accordingly, after following the procedure laid down under Clause 42.02 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, he passed final assessment orders and, hence, he prayed this Authority to dismiss the Appeal and confirm the impugned order passed by the 2<sup>nd</sup> Respondent.

8. Both parties were informed vide letter No.OMB/B/G-188/2014 dated 16.10.2014 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.

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

***a) Whether the Appellant has misused power as alleged by the 1<sup>st</sup> 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 Licensees in the State of Karnataka?**

**d) Whether CGRF & Ombudsman get 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 Licensees in the State of Karnataka?**

**e) Whether CGRF is right in dismissing the complaint of the Appellant on the ground of lack of jurisdiction?**

10. The Assistant Executive Engineer(EI) O & M Sub-Division, based on Junior Engineer's inspection report and Mahazar, appears to have back billed the Appellant for misusing power under LT-5 tariff schedule. The Assistant Executive Engineer(EI) claims that the Appellant comes under LT-3 tariff schedule. Thus, he concludes that the Appellant has misused LT-5 tariff. Perusal of KERC Tariff Order reveals that the Appellant does not come under LT-3 tariff schedule. In fact, the Appellant does not come under any of the KERC tariff categories. In such circumstances, the course open to the Licensee is to approach the Commission and seek appropriate tariff schedule for such type of consumers or group of consumers. Instead, the Licensee has taken upon itself the responsibility of assigning LT-3 tariff schedule to the Appellant when such power vested with the Commission. This amounts to Licensee usurping the powers of the Commission. The Licensee, without the approval of Commission, cannot assign Tariff Schedule to any of the consumer or group of consumers. In the present case, the Licensee is found to have arrogated the powers of the Commission and assigned LT-3 tariff schedule to the Appellant even though gold smithy is not included in the LT-3 tariff Schedule and found to have back billed at twice the LT-3 tariff applicable for misuse of power for a period of 12 months for Rs.44,818/-.

11. 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 electricity 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 at 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 Licensees in the State of Karnataka provides for charging two times the tariff applicable to the purpose for which the energy is misused. To say that a person has misused tariff, there should be two tariff categories: (a) one category carrying lower tariff and (b) another category carrying higher tariff.

12. When a consumer who is not eligible to avail power under a category which carries lower tariff and liable to be charged under higher tariff category found using power under a category which carries lower tariff fraudulently, amounts to misuse of tariff.

13. It is the case of the 1<sup>st</sup> Respondent that Appellant in order to be considered under LT-5 tariff schedule, he should be residing in the house and engaged in gold smithy. However, the Appellant has not fulfilled both the conditions, but fulfilled only one condition i.e. doing gold smithy in the building and, hence, it amounts to misuse of power and liable to be back billed.

14. In the instant case, the Appellant may not fall under LT-5 tariff schedule but, at the same time, he cannot be brought under LT-3 tariff schedule as gold smithy is not included in LT-3 tariff schedule. For that matter, the Appellant cannot be brought under any of the existing tariff schedules. When there is no tariff schedule assigned to the Appellant, it cannot be said that he has misused LT--5 tariff schedule. In the given circumstances, if the Appellant cannot be classified under any of the existing tariff schedules, the course open to the Licensee is to approach the Commission seeking specific tariff category to the Appellant for the purposes of charging for consumption of electricity.

**15.** It is undisputed that the 1<sup>st</sup> Respondent has re-classified the Appellant from LT-5 to LT-3 tariff schedule. Under Clause 3.04 of the Conditions 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."***

**16.** ***If the consumer does not take steps within the time indicated in the notice to execute the fresh agreement duly serving the required conditions, the Engineer may disconnect the supply of power, after issuing a clear fifteen days' notice after considering his explanations, if any."***

17. In the present case, the 1<sup>st</sup> Respondent, based on Executive Engineer's (Vidhana Soudha) letter and without verifying KERC Tariff Order, is found to have classified the Appellant under LT-3 tariff category (commercial). Even if it is assumed that the Appellant is not engaged in saree weaving and not using power for saree weaving and using power for gold smithy, it cannot be said that such activity comes under LT-3 tariff schedule and, hence, he is liable to pay back billing charges at twice the rate applicable to LT-3 tariff .

18. In the instant case, the 1<sup>st</sup> Respondent has assumed that the Appellant comes under LT-3 tariff i.e. higher tariff and based on this assumption found to have levied penalty at twice the LT-3 applicable tariff for a period of 12 months for alleged misuse of power. To say that a consumer has misused tariff, there shall be two tariff categories i.e. one carrying lower tariff and another carrying higher tariff. Further, when a consumer who is liable to be charged under higher tariff category if found paying charges at the rate applicable to a lower tariff category amounts to misuse of power. In the present case, the 1<sup>st</sup> Respondent has not shown the higher tariff that the Appellant is liable to pay as per the Tariff Order. When there is no higher tariff category assigned to the Appellant in the tariff order, the 1<sup>st</sup> Respondent

cannot arbitrarily assign higher tariff category i.e. LT-3 tariff and back bill the Appellant.

19. The 1<sup>st</sup> Respondent while re-classifying 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 1<sup>st</sup> Respondent appears to have assigned LT-3 tariff category to the Appellant on wrong assumptions. This amounts to arbitrariness and usurping of Commission's powers.

20. In the circumstances discussed above, back billing now raised on the assumption that the Appellant consumer falls under LT-3 tariff category is wrong and incorrect and, hence, liable to be set aside. In view of this, licensee is hereby instructed to collect electricity charges under LT-5 tariff from the Appellant till the Commission specifies appropriate tariff applicable to the Appellant consumer or group of consumers.

21. The Law officer, BESCO, strongly contended that neither CGRF nor the Ombudsman get jurisdiction to deal with matters pertaining to misuse of electricity. 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 a consumer with regard to supply of electricity by a Licensee, provided that grievance falling within the purview of any of the following provisions of the Act are excluded from the jurisdiction of the Forum:

- (a) Un authorised use of electricity as provided under section 126 of the Act
- (b) Offences and penalties as provided under section under section 135 to 139 of the Act
- (c) Accident in the distribution, supply or use of electricity as provided under Section 161 of the Act,



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

23. The 1<sup>st</sup> Respondent's argument that the Appellant has misused LT-5 tariff which was sanctioned for weaving of sarees for gold smithy amounts to misuse of electricity and cases relating to misuse of power do not come under the purview of either CGRF or Ombudsman is based on wrong assumption. When there is no tariff category for the Appellant in the tariff order, question of the Appellant misusing electricity does not arise. As a matter of fact, the action of the Licensee in the present case amounts to re-classification of consumer under Clause 3.04 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. But even the re-classification is found to have not been done as per Clause 3.04 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Re-classification of consumer comes under the definition of '**complaint**' under clause 2(g) of the KERC (CGRF and Ombudsman) Regulations, 2004 and, hence, the 2<sup>nd</sup> Respondent gets jurisdiction to deal with the complaint. This aspect appears to have been overlooked by the 2<sup>nd</sup> Respondent and found to have dismissed the complaint on the wrong assumption that the case comes under Section 126 of the Electricity Act, 2003 and, hence, it does not get jurisdiction. In the circumstances discussed above, the 2<sup>nd</sup> Respondent certainly gets jurisdiction to decide cases relating to re-classification of consumers and, hence, the 2<sup>nd</sup> Respondent ought to have assumed jurisdiction and passed appropriate order but instead it has dismissed the complaint on the grounds of lack of jurisdiction which is highly objectionable and liable to be set aside.

24. The Law Officer, BESCO, citing the ruling issued by the Electricity Ombudsman in the case of Shri Puttaraju Vs BESCO argued that the present case also falls under that category and, hence, liable to be dismissed. This argument does not hold any water, as in that case, there was no contest regarding classification of tariff as the consumer had consented to be included under LT-3 tariff schedule and, hence, this Authority ruled that it amounted to misuse of

power/tariff. In the instant case, the Appellant has contested the tariff category assigned to him and back billing done on that basis and, hence, ruling issued in that case cannot be applied to the present case. Hence, arguments of the Law Officer, BESOM, is rejected.

25. For the foregoing reasons, the following orders are passed:

### **ORDER**

- (A) In the circumstances discussed above, impugned order of the 2<sup>nd</sup> Respondent is set aside.
- (B) Back billing demand raised by the 1st Respondent against the Appellant for Rs.44,818/- is set aside.
- (C) The 1<sup>st</sup> Respondent is here by directed to charge the Appellant under LT-5 tariff schedule till the Commission specifies appropriate tariff category applicable to the Appellant consumer or group of consumers.

26. Consequently, **the appeal succeeds.**



(B.R.Jayaramaraje Urs)  
Electricity Ombudsman

1. Shri R.D.Jayanth Kumar, No.24/6, 13<sup>th</sup> Cross, Cubbonpet, Bangalore-560002 (represented by its Authorised Representative, Sri.G.B.Revanaradhya, Bangalore).
2. The Chairperson, Consumer Grievance Redressal Forum, Bangalore Urban District, Basaveshwarnagar, Bangalore.
3. The Assistant Executive Engineer (Ele), O & M W-5 Sub Division, BESCOM, Krishi Bhavana, Hudson Circle, Bangalore
4. Shri Vinayaka.K, Law Officer, BESCOM Headquarters, K.R.Circle, Bangalore-560001.
5. Managing Directors of ESCOMs.
6. PS to Hon. Chairman, KERC

7. PS to Hon. Member (A), KERC
8. PS to Hon. Member (M), KERC
9. PS to Secretary, KERC