



# 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-185/2014/427

Dated 17.10.2014

Shri R.Gnanamurthy,  
No.8, 13<sup>th</sup> Cross,  
Cubbonpet  
BANGALORE-560002  
(R.R.No.EH 4031)  
**(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-2**  
**(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, BESCOM Bangalore Urban District, Bangalore (herein after referred to as the 2nd Respondent) vide No CGRF/12/2013-14/20.12.2013/1067-73 dated 23.07.2014 in respect of the Appellant's complaint regarding BESCOM's back billing for Rs.76,753/- on the ground of alleged misuse of power. The 2<sup>nd</sup> Respondent has declined to grant any relief to the Appellant in the matter. 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 BESCOM. His installation comes under the jurisdiction of the Assistant Executive Engineer(EI), W-5 Sub Division, BESCOM, Krishi Bhavan, Bangalore (hereinafter referred to as the 1<sup>st</sup> Respondent). This installation bearing R.R No W5 EH-4031 earlier stood in the name of his late father Shri Ramabhadrappa and was serviced on 30.08.1982 under LT-2(a) tariff category with a sanctioned load of 2.96 kW. After the death of his father, on account of partition amongst the brothers, the subject installation and the building fell to the share of the Appellant. Because the building was too small to be resided, he rented out the house and shifted his family to a rented house in Chamarajpet, Bangalore.

3. The Appellant rented out his building to a gold smith on monthly rental basis. The tenant is living with his family and also doing gold smithy using portion of the house. He is doing gold smithy on job basis against the orders. Thus, the tenant is not engaged in any commercial activity in the premises. However, the Junior Engineer, O & M Sub-Division, who inspected the premises of the Appellant back billed for Rs.76,753/- on the alleged misuse of LT-2(a) tariff schedule. The Appellant filed objections against the back billing and also sought copies of mahazar & inspection report. However, these reports were not furnished and further the 1<sup>st</sup>

Respondent went ahead with passing final assessment order vide No. 3419 dated 30.11.2013 confirming the earlier order. 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. Accordingly, the Appellant filed a complaint before the 2<sup>nd</sup> Respondent and the 2<sup>nd</sup> Respondent, after hearing the parties, passed the impugned order dated 28.04.2014 dismissing the appeal for lack of jurisdiction. In the same order, the 2<sup>nd</sup> Respondent advised the Appellant to file an appeal before the Appellate Authority under Clause 44 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka though the present case does not pertain to misuse of power but pertained to misclassification of tariff. Hence, the Appellant has filed this appeal before this Authority.

4. As per the KERC Tariff Order, electricity consumer who uses portion of his residential house for gold smithy and silver smithy and using power up to 200 watts does come under LT-2(a) tariff schedule. Hence, earlier categorisation of the Appellant under LT-2(a) tariff was appropriate but subsequent categorisation under LT-3 tariff is not in accordance with KERC Tariff Order. The tenant is not using the entire residential house for commercial purposes and, hence, back billing done by the 1<sup>st</sup> Respondent is illegal and, therefore, liable to be set aside. Hence, prayed this Authority to set aside the impugned order passed by the 2<sup>nd</sup> Respondent and also to quash the back billing raised for Rs.76,753/- against the Appellant.

5. The 1<sup>st</sup> Respondent's comments were called vide letter No OMB/B/G-185/2014/377/dated 26.06.2014.

6. The 1<sup>st</sup> Respondent, in his statement of objections, admitted the Appellant having used the subject premises for residential purposes but denied that there had been any gold smithy activities in the building on the date of service of the installation. He denied any lapse on the part of the 1<sup>st</sup> Respondent. He further submitted that when things stood at this, the Junior Engineer, O & M Unit conducted an inspection of the building and during inspection found the consumer using the

entire premises for gold smithy and not using any portion of the building for residential purposes. He added that the Appellant, in his appeal memo, admitted having rented out his building to a gold smith who used the building for residential purposes as well as gold smithy. The Appellant failed to furnish any proof for having occupied portion of the building for residential purposes. Since the Appellant failed to produce any proof that he used the building for residential purposes as well as for gold smithy, the 1<sup>st</sup> Respondent back billed the installation for Rs.76,753/-. Hence, he justified raising of back billing demand.

7. The case was taken up for hearing on 30.09.2014. On behalf of the Appellant, Shri G.B.Revanaradhya, Authorised Representative, appeared and put forth his arguments. On behalf of the 1<sup>st</sup> Respondent, Shri Vinayaka.K, Law Officer, BESCO appeared and advanced his arguments.

8. The Appellant reiterated the submissions made in the appeal memo.

9. The Law Officer, BESCO, argued that the instant case relates to misuse of power and the 1<sup>st</sup> Respondent has passed final assessment order after duly following Clause 42.07 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and, if the Appellant is aggrieved by the order passed by the 1<sup>st</sup> Respondent, he can approach the Appellate Authority under Clause 44 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

10. The Law officer added that neither the 2<sup>nd</sup> Respondent nor Ombudsman has jurisdiction to deal with the cases falling under Clause 42.02 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka as Clause 2(g) of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004 prevents CGRF and Ombudsman from dealing with cases falling under Section

126,135 to 139 and 161 of the Electricity Act, 2003 and, hence, this appeal is not maintainable before this Authority and liable to be dismissed.

11. The Law Officer, BESCO, rejected the arguments of the Appellant that he had been wrongly classified under LT-3 tariff category and the Appellant, if had any grievance regarding tariff classification, he could approach BESCO and BESCO would re-visit the issue and assign appropriate tariff as per tariff order.

12. Both parties were informed vide letter No.OMB/B/G-185/2014/409 dated 15.09.2014 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.

13. 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?***

14. 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-2(a) tariff schedule. The Assistant Executive Engineer(el) claims that the Appellant comes under LT-3 tariff schedule. Thus, he concludes, that the Appellant has misused LT-2(a) 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 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 the Gold Smithy is not included in the LT-3 tariff Schedule and appeared to have back billed the Appellant at twice the LT-3 tariff applicable for misuse of power for a period of 12 months for Rs.76,753/-.

15. 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 tariffs: (a) one category carrying lower tariff and (b) another category carrying higher tariff.

16. 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.

17. It is the case of the 1<sup>st</sup> Respondent that if the Appellant is to be considered under LT-2(a) tariff schedule, he should be residing in the house doing gold smithy work. However, the Appellant has not fulfilled these two 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.

18. In the instant case, the Appellant may not fall under LT-2(a) tariff schedule but at the same 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-2(a) 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.

**19.** It is undisputed that the 1<sup>st</sup> Respondent has re-classified the Appellant from LT-2(a) 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.***

***20. 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."***

21. 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's tenant is not residing in the premises and doing only gold smithy on job basis, it cannot be said that gold smithy on job basis strictly comes under LT-3 tariff schedule (commercial) and, hence, he becomes liable to pay back billing charges at twice the rate applicable to LT-3 tariff.

22. 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 from the Tariff Order the higher category the Appellant is subjected to. 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.

23. 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.

24. 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 charges from the Appellant under LT-2(a) tariff till the Commission specifies appropriate tariff applicable to the Appellant consumer or group of consumers.

25. The Law officer, BESCOM, strongly contended that neither CGRF nor the Ombudsman get 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 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,

26. 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.

27. The 1<sup>st</sup> Respondent's argument that the Appellant consumer falls under LT-3 tariff category and the Appellant has misused LT-2(a) tariff and, hence, the 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 under the tariff order, question of Appellant misusing tariff 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 re-classification is found to have been done without following the procedure laid down under 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. Hence, CGRF 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.

28. 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 held 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 as these two cases stand on different footing. Hence, arguments of the Law Officer, BESCO, is rejected.

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

## ORDER

- (A) In the circumstances discussed above, impugned order of CGRF is set aside.
- (B) Back billing demand raised by the 1st Respondent against the Appellant for Rs.76,753/- is set aside.
- (C) The 1<sup>st</sup> Respondent is here by directed to charge the Appellant under LT-2(a) tariff schedule till the Commission specifies appropriate tariff category, applicable to the consumer or group of consumers.

30. Consequently, **the appeal succeeds.**



(B.R.Jayaramaraje Urs)  
Electricity Ombudsman

1. Shri R.Gnanamurthy, No.8, 13<sup>th</sup> Cross, Cubbonpet, Bangalore-560058 (represented by its Authorised Representative, Sri.G.B.Revanaradhya, Bangalore).
2. 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