



Before the Electricity Ombudsman

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

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

Electricity Ombudsman

Case No.OMB/B/G-187/2014/431

Dated 27.10.2014

Shri S.Devaraju,
No.91, 18th Cross,
Cubbonpet
BANGALORE-560002
(R.R.No.W1P 2384)
**(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, 3rd 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 orders passed by the Consumer Grievance Redressal Forum, BESCO, Bangalore Urban (hereinafter referred to as the 2nd Respondent) vide case No CGRF/13/2013-14/23.12.2013/1081-87 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 1st Respondent) for Rs.40,190/- for the alleged misuse of power under LT-5 tariff in respect of installation bearing W1P-2384. 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 and installation bearing No W1P-2384 stands in the name of the Appellant. The installation was serviced under LT-5 tariff schedule on 08.06.56 with a sanctioned load of 6 HP for the purposes of weaving artificial sarees. The Appellant could not face stiff competition and, hence, he stopped weaving sarees and disposed the power loom. Now he is engaged in engraving names on gold and silver ornaments and using power for engraving names on silver and gold ornaments which comes under LT-5 Tariff Schedule (Industrial Tariff). When things stood at this, the Junior Engineer (EI) O&M Sub-Division inspected the installation on 26.10.2013 and observed that initial power sanction for weaving of sarees under LT-5 tariff scheme is now being used for engraving names on gold and silver ornaments & utensils on a job basis which amounts to misuse of power. Afterwards, the Appellant received demand notice for Rs.40,190/-. The Appellant submitted his objections to the demand notice on the very next day which was not considered by the 1st Respondent. However, he passed the final order on 21.12.2013. The 1st Respondent in his order advised the Appellant to approach the 2nd Respondent if he was aggrieved by his assessment

orders. Accordingly, the Appellant filed a complaint before the 2nd Respondent. The 2nd Respondent, after hearing the parties, passed the impugned order on 28.05.2014 dismissing the complaint for lack of jurisdiction and also advising the Appellant to approach the Appellant Authority if he was aggrieved by the assessment orders passed by the 1st Respondent. Hence, he prayed this Authority (a) to declare the earlier categorisation of the Appellant under LT-5 tariff Schedule as valid and correct (b) and re-classification of the Appellant under LT-3 Tariff schedule as invalid and incorrect and (c) directions to the 1st Respondent to withdraw the back billing demand raised for Rs.40,190/-.

3. The 1st Respondent's comments were called vide letter No OMB/B/G-187/2014/379 dated 26.06.2014. The 1st Respondent has furnished his replies vide letter No AEE(E)/ W5/AE(T)/14-15/1406C dated 11.07.2014.

4. The 1st Respondent in his replies submitted that the subject installation had been inspected by the Junior Engineer(EI) O&M Unit on 26.10.2014 and found that the power had been used for engraving names on gold and silver ornaments instead of saree weaving. Based on this report, the 1st Respondent sought clarification from the Executive Engineer (EI), Vidhana Soudha, Bangalore on how to classify such activity (Engraving names on gold and silver ornaments). In response to his letter, the Jurisdictional Executive Engineer(EI) Vidhanasoudha in his letter vide No 3091-94 dated 04.09.2013 advised him to consider such cases under LT-3 tariff schedule. Based on this clarification, he issued demand notice to the Appellant for misuse of power and later following the procedure issued final assessment order. Hence, prayed this Authority to dismiss the appeal and to direct the Appellant to approach the Appellant Authority under Clause 44 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka if he was aggrieved by the assessment orders passed by the 1st Respondent.

5. The case was taken up for hearing on 15.10.2014. On behalf of the Appellant, Shri Revanaradhya, Authorised Representative, appeared and advanced his arguments and, on behalf of the 1st Respondent, Shri Vinayaka.K, Law Officer, BESCO appeared and put forth his arguments.

6. The Authorised Representative of the Appellant reiterated the submissions made in the appeal memo.

7. The Law Officer, BESCO argued that the subject installation was serviced initially under LT-5 Tariff Schedule for a sanctioned load of 6 HP and at that time power was being used for weaving of sarees. Such being the case, on 20.10.13, an inspection was carried out by the Junior Engineer(EI) O&M Unit and, during the inspection, it was found that there was no saree weaving activity and there were no machines in the premises and found the Appellant using power for engraving names on gold and silver ornaments. Based on this report, the 1st Respondent sought clarification from the Executive Engineer (EI) on how to classify such activity. The jurisdictional Executive Engineer(EI) Vidhana Soudha advised him to classify such activity under LT-3 Tariff Schedule. Pursuant to the clarification, the 1st Respondent issued a notice dated 28.11.2013 as to why back billing should not be done for misuse of power i.e. power sanctioned for saree weaving was being used for other purposes. The Appellant, in his replies, denied having misused power and also objected that the Inspecting Officer had not drawn mahazar during inspection. These objections were overruled and the 1st Respondent passed final assessment order on 17.12.2013 confirming the earlier order.

8. The Law Officer added that the Appellant, in spite of opportunity provided, failed to furnish trade license issued by BBMP in proof of his activity and also failed to prove that he was using power for the purpose for which it was sanctioned and,

hence, he was back billed for misuse of tariff. Therefore, prayed this Authority to dismiss the appeal and confirm the order passed by the 2nd Respondent.

9. Both parties were informed vide letter No.OMB/B/G-187/2014/421 dated 07.10.2014 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.

10. 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 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 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?

11. 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 engraving names on gold and silver ornaments 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.40,190/-.

12. 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.

13. 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.

14. It is the case of the 1st Respondent that Appellant in order to be considered under LT-5 tariff schedule, he should be residing in the house and engaged in engraving names on gold and silver ornaments. However, the Appellant has not fulfilled both the conditions, but fulfilled only one condition i.e. engraving names on gold and silver ornaments in the building and, hence, it amounts to misuse of power and liable to be back billed.

15. 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 engraving names on gold and silver ornaments 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.

16. It is undisputed that the 1st 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.

17. 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."

18. In the present case, the 1st 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 engraving names on gold and silver ornaments, 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 .

19. In the instant case, the 1st 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 1st 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 1st Respondent

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

20. The 1st 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 1st 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.

21. 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.

22. 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,

23. 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.

24. The 1st Respondent's argument that the Appellant has misused LT-5 tariff which was sanctioned for weaving of sarees for engraving names on gold and silver ornaments 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 under 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 2nd Respondent gets jurisdiction to deal with the complaint. This aspect appears to have been overlooked by the 2nd 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 2nd Respondent certainly gets jurisdiction to decide cases relating to re-classification of consumers and, hence, the 2nd 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.

25. 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.

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

ORDER

- (A) In the circumstances discussed above, impugned order of the 2nd Respondent is set aside.
- (B) Back billing demand raised by the 1st Respondent against the Appellant for Rs.40,190/- is set aside.
- (C) The 1st 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.

27. Consequently, **the appeal succeeds.**


(B.R.Jayaramaraje Urs)
Electricity Ombudsman

1. Shri S.Devaraju, No.91, 18th Cross, Cubbonpet, Bangalore-560058 (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