



**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/H/G-203/2014/472

Dated 30.01.2015

Shri Shridhar Hulmani,
C/o T.M.Baddi,
Near S.B.I.,
Keshavapura,

HUBLI

**(Represented by Sri Tushar M.Baddi,
Authorised Representative)**

.. Appellant

Vs

1. Assistant Executive Engineer(EI),
O&M City Sub-Division-3,
HESCOM,
Udhyamanagar,
HUBLI

2. The Chairperson,
Consumer Grievances Redressal Forum (C.G.R.F)
Office of the Superintending Engineer,
O & M Circle,
HESCOM
Tabib Land,
HUBLI-580020

.. Respondents

1. This is an appeal under Clause 22.02 of KERC (CGRF & Ombudsman) Regulations, 2004 against the order passed by the Consumer Grievance Redressal Forum, HESCOM, Dharwar District (here in after referred to as the 2nd Respondent) vide order No. ಅಇಂ(ಬಿ)/ಉಲೆನಿ/ಹಿಸ/ಗ್ರಾಕುಂಕೊನಿವೇ/ಕಡತ-193/9850-54 ದಿನಾಂಕ 30.10.2014 in respect of Appellant's complaint against Back billing by the Assistant Executive Engineer (EI), O & M City Sub-Division-3, HESCOM, Hubli (hereinafter referred to as the 1st Respondent) for Rs.4,32,317/-. Aggrieved by the order passed by the 2nd Respondent, the Appellant has submitted his case as under:

2. The Appellant is an electricity consumer of HESCOM. Installations bearing R.R NOS MP 408160 and 408419 stand in the name of the Appellant and was serviced on 01.12.2007 with a sanctioned load of 7 kW.

3. The Appellant is a C & F agent of M/s. Sarvana Stores Foods (P) Limited, Bangalore and, as C & F agent, he provides cold storage and distribution facilities to the Manufacturer. The Appellant gets ice cream in bulk which is manufactured at M/s. Sarvana Stores Foods (P) Limited, Bangalore. The Appellant raised invoice against the purchasers and gave delivery of ice cream as per the manufacturer's advice The Appellant is using installation bearing No.MP 408160 exclusively for cold storage purposes and installation bearing RR No 408419-c for distribution purposes. When things stood at this, the vigilance wing of BESCO inspected the premises of the Appellant on 19.11.2012 and found the Appellant using the place for storage and distribution of ice cream raising invoices. The vigilance has wrongly considered Appellant as the distributor when he is only a C & F agent. The 1st Respondent, on the complaints made by the Appellant against the Vigilance report, deputed the Section Officer for inspection of the Appellant's premises. The Section Officer conducted inspection of the premises and observed that installation bearing R.R NO M.P 418160 is being exclusively used for cold storage purposes and there is no sale of ice cream in the said premises. Further, he reported that installation No 407279 was not in use and cold storage plants come under LT-5 tariff

schedule. However, the 1st Respondent has raised back billing charges based only on the vigilance report ignoring the Section Officer's report. HESCOM raised back billing charges on 07.12.2012 and the Appellant raised objections against back billing on 19.12.2012. Since the 1st Respondent failed to pass final assessment order, the Appellant approached the 2nd Respondent for justice and the 2nd Respondent, after hearing the parties, passed order dismissing the complaint as non-maintainable as the 2nd Respondent did not get jurisdiction to deal with cases coming under Section 126 of the Electricity Act, 2003 i.e misuse of power.

4. The 1st Respondent's comments were called vide this office No OMB/H/G-203/2014/454/dated 12.12.2014.

5. In his comments, the 1st Respondent stated that the Appellant had two installations and these two installations earlier had been billed under LT-2(a) and LT-5 respectively and, after inspection, it had been revealed that the Appellant had been functioning as Distributor to M/s. Sarvana Stores Foods (P) Limited, Bangalore and, hence, the installations had been proposed to be billed under LT-3 tariff.

6. The case was taken up for hearing on 19.01.2015. On behalf of the Appellant, Shri Tushar. M. Baddi, the Authorised Representative, appeared and advanced his arguments and, on behalf of the 1st Respondent, Shri Devaraju, Advocate, present and put forth his arguments. Arguments, from both sides got concluded on the same day.

7. Both parties, during the hearing, reiterated the submissions made in the appeal memo and statement of objections respectively.

8. Both parties were informed vide letter No.OMB/H/G-203/2014/462 dated 29.12.2014 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 positions of the parties, the issues that arise for our consideration are:

a) Whether the 1st Respondent has passed final assessment orders in the instant case?

b) Whether the 2nd Respondent can admit complaint of the Appellant without final assessment order being passed by the 1st Respondent?

10. In order to answer the above questions, we will have to peruse the provisional bill issued by the 1st Respondent dated 07.07.2012 which states that the vigilance, during their inspection, had observed that the Appellant had misused power and, hence, the Appellant is liable for penalty under Regulation 42.02 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Based on vigilance report, the 1st Respondent appears to have issued a provisional bill calling upon the Appellant to pay the back billing charges and to file objections, if any, within 7 days. The Appellant appears to have filed his objections against the back billing dated 19.12.2012 and 12.02.2013. The 1st Respondent appears to have not passed final assessment order after the appellant had filed his objections.

11. However, the Appellant appears to have filed a complaint before the 2nd Respondent after he had failed to receive any response from the 1st Respondent after he had filed objections. The 2nd Respondent appears to have admitted the complaint of the Appellant and passed order dismissing the complaint on grounds of non-maintainability under Section 126 of the Electricity Act, 2003 without verifying whether the 1st Respondent had passed any final assessment order. When the 1st Respondent had not passed final assessment order, only two courses were available to the 2nd Respondent: (a) to advise the Appellant to approach the 2nd Respondent

after the 1st Respondent had passed order (b) to direct the 1st Respondent to pass final assessment order within a specific period. Instead, the 2nd Respondent appears to have admitted the complaint filed by the Appellant even when the 1st Respondent had not passed final assessment order. Consumers can approach CGRF when they are aggrieved by some order/decision. Here, no order is passed or no decision is taken by the 1st Respondent. May be, the Appellant has approached the 2nd Respondent because the 1st Respondent failed to pass final assessment order for a long time on his objections. In such circumstances, as already explained above, the 2nd Respondent can direct the 1st Respondent to pass final assessment order within a specified period. Thus, the 2nd Respondent appears to have acted without any order being passed below by the 1st Respondent and passed order in vacuum, which is highly objectionable and irregular and liable to be set aside.

12. In the light of the above discussions, the following orders are passed:

ORDER

13. For the foregoing reasons, the impugned order passed by the 2nd Respondent is set aside. The case is hereby remanded to the 1st Respondent to pass final assessment order within one month from the date of issue of this order on the objections already filed by the Appellant without issuing any further notice. The Appellant is at liberty to approach the Competent Authority, if he is aggrieved by the final assessment order passed by the 1st Respondent. In the result appeal **partly succeeds**.



(B.R. Jayaramaraje Urs)
Electricity Ombudsman

1. Shri Shridhar Hulmani, C/o T.M.Baddi, Near S.B.I., Keshavapura, Hubli.
2. Assistant Executive Engineer (EI), O & M City Sub-Division-3, HESCOM, Udhyamanagar, Hubli.

3. Consumer Grievance Redressal Forum, (Dharwad District), Office of the Superintending Engineer, O & M Circle, HESCOM, Tabib Land, Hubli-580020.

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