



# 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/C/G-151/2013/329

Dated 20.02.2014

M/s.Vishal Nirmiti Private Limited,  
No.205, "Devarata",  
Sector-17, Vashi,  
NAVI MUMBAI-400 078

**(Represented by M/s. Shridhar Prabhu Associates,  
Advocates - Authorised Representatives)**

.. **Appellant**

**Vs**

1. The Asst. Executive Engineer(EI)  
O & M Sub Division-2,  
Chamundeshwari Electricity Supply Corporation,  
**MALAVALLI**  
Mandya District

2.The Chairperson  
Consumer Grievance Redressal Forum  
Chamundeshwari Electricity Supply Corporation,  
**MANDYA**

.. **Respondents**

1. This appeal under Clause 22.02 of KERC (CGRF & Ombudsman) Regulations, 2004 is directed against the order passed by CGRF, CESC, Mysore, vide No.

ಮುಖ್ಯ(ಬಿ)/ಮೈವ/ಅಸಾ/2013-14/15-21 ದಿನಾಂಕ 16.04.2013 (hereinafter referred to as 2<sup>nd</sup> Respondent) in respect of Appellant's grievance with regard to change of tariff category from HT-2(b) to LT-7 and raising back billing charges for Rs.4,53,180/- by the Assistant Executive Engineer (EI), CESC, O & M Sub-Division-2, Malavalli,(hereinafter referred to as the 1<sup>st</sup> Respondent) and refusal of the 2<sup>nd</sup> Respondent to grant any relief to the Appellant and, hence, this appeal. The Appellant's grievance is as under:

2. The Appellant is a Civil Contractor doing sub-contract work for BWSSB like prefabrication and bending of pipes etc., for water supply projects. In order to execute the work, the Appellant applied for 200 KVA power in 2010. Power was sanctioned under HT-2(b) tariff and serviced on 24.02.2010. Later, on 26.10.2010, the Vigilance Squad of CESC inspected the installation and observed that the instant work related to drinking water project and temporary in nature and, hence, supply of power under HT-2(b) was incorrect and suggested billing under LT-7. In pursuance of Vigilance report, the 1<sup>st</sup> Respondent raised a revised bill for Rs.4,53,180/-. The Appellant challenged change of tariff category from HT-2(b) to LT-7 in the Hon.High Court and the Hon'ble High court, after hearing the matter, passed order directing the 1<sup>st</sup> Respondent to treat the Show Cause Notice already issued as notice and afford fresh opportunity to the Appellant to file his objections and, thereafter, to pass necessary order after considering the objections. The 1<sup>st</sup> Respondent, in pursuance to Hon.High Court directions, passed fresh order confirming earlier re-classification of tariff category under LT-7. Aggrieved by the

decision, the Appellant filed Form No.A before the 2<sup>nd</sup> Respondent and the Chief Engineer, Mysore Circle issued an endorsement to the Appellant that the complaint did not come under the jurisdiction of the 2<sup>nd</sup> Respondent and, hence, to approach the Appellate Authority under Clause 44 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. This decision was challenged before the Electricity Ombudsman and the Electricity Ombudsman, after hearing the matter, passed order confirming the 2<sup>nd</sup> Respondent having jurisdiction to deal with the Complaint. The Case was remanded to the 2<sup>nd</sup> Respondent. The 2<sup>nd</sup> Respondent passed the impugned order. Aggrieved by the order, the Appellant has filed this appeal.

3. The 1<sup>st</sup> Respondent in his reply justified the change of tariff category from HT-2(b) to LT-7 based on Vigilance Report and, hence, prayed this Authority to confirm the order passed by the 2<sup>nd</sup> Respondent.

4. The case was taken up for hearing on 07.02.2014. On behalf of the Appellant, Shri Shridhar Prabhu, Advocate, submitted his arguments on 18.02.2014 and the 1<sup>st</sup> Respondent and the Executive Engineer (EI), O & M Division, CESC, Maddur defended the case.

5. The Advocate for the Appellant submitted that the 1<sup>st</sup> Respondent, at the time of sanction of power, considered all aspects of the issue and correctly classified the tariff category under HT-2(b). The installation comes under HT category and,

hence, it could not be billed under LT-7 category as it is untenable and impermissible under law. Further argued that the 1<sup>st</sup> Respondent had not terminated the existing agreement nor entered into fresh agreement and, hence, the valid and subsisting agreement was in place till now and without entering into fresh agreement, the 1<sup>st</sup> Respondent could not have raised demand for Rs.4,53,180/- under LT-7 tariff category. Hence, prayed this Authority to set aside the order passed by the 2<sup>nd</sup> Respondent and to issue directions to the 1<sup>st</sup> Respondent to bill the Appellant under HT-2(b) category.

7. Both parties were informed vide letter No.OMB/C/G-151/2013/323 dated 03.01.2014 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.

8. Having regard to the contending positions of the parties, the issue that emerges for our consideration is:

***a) Whether the 1<sup>st</sup> Respondent is right in changing the tariff category from HT-2 (b) to LT-7 in regard to Appellant's installation?***

9. The Advocate for the Appellant has based his arguments on the premise that there is no provision for billing HT installation under LT-7 tariff category. We will

have to examine whether this argument stands the scrutiny of the law. The Distribution Companies have to follow KERC Tariff Order as for as supply of power and levy of tariff are concerned. The KERC Tariff Order 2010 has given the rate schedule as regards LT-7 category is concerned which is extracted and produced below:

### **Tariff Schedule LT-7**

Applicable to temporary power supply of all categories.

#### **Rate schedule**

Less than 67 HP	Energy charge @ 750 Ps / unit, subject to a weekly minimum of Rs.150 per kW of the sanctioned load.	
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67 HP and above:	Fixed Charge	Rs. 200 / HP / month
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	Energy Charge	750 Ps / unit (weekly minimum of Rs.150 per kW is not applicable).
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10. From the above, it is clear that the HT installation can be billed under LT category. In the present case, CESC has sanctioned 200 KVA power as per the request of the Appellant. The Appellant is a sub-contractor under SPML and SPML in their letter dated 28<sup>th</sup> November, 2009 addressed to the Appellant stated that they were allotting site for establishing fabrication and Gunning Shop and for commencing the work and further informed that, after the completion of the work, the site should be handed over to them in good condition. The Letter discloses that the Appellant was entrusted with the responsibilities of fabricating and gunning of

M.S pipes at T.K Halli and the work was temporary in nature and the Appellant was advised to hand over the land after the work was over. It appears that the 1<sup>st</sup> Respondent, without properly examining whether the activity undertaken by the Appellant came under temporary in nature or permanent, sanctioned power under HT-2(b) category. The Officer prima facie appears to have violated KERC Tariff Order.

11. From the records, it can be seen that subsequently the Vigilance Squad noticed during their inspection that the installation had been wrongly billed under HT-2(b) instead of LT-7. Based on this report, the 1<sup>st</sup> Respondent is found to have raised back billing charges for Rs.4,53,180/-. The Appellant has argued that the 1<sup>st</sup> Respondent has raised back billing charges without terminating the existing agreement and without entering into fresh agreement and, hence, he was not liable to pay the back billing charges. The 1<sup>st</sup> Respondent countered this argument and submitted that the Appellant, in spite of several correspondences, failed to come forward to enter into fresh agreement and, hence, was back billed. Further, it is possible that the Appellant, after the completion of the work, had wound up the activity making CESC not taking further steps under Clause 3.04 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and entering into fresh agreement etc.

12. In the light of the above, the decision taken by the 1<sup>st</sup> Respondent to raise back billing charges based on Vigilance Report is found to be in order and there is no

merit in the Appellant's argument that HT Installation cannot be billed under LT. The second argument that the 1<sup>st</sup> Respondent has raised back billing charges without changing the tariff category from HT-2(b) to LT-7 without entering into fresh agreement is also irrelevant as the back billing is raised for the period the Appellant availed power wrongly under HT-2(b) instead under LT-7. Action under Clause 3.04 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and fresh agreement would have been possible if the Appellant had not wound up the activity. Hence, the following order:

**ORDER**

13. For the foregoing reasons, **the appeal is dismissed.**



(B.R. Jayaramaraje Urs)  
Electricity Ombudsman

1. M/s. Vishal Nirmiti Private Limited, NO.205, "Devarata", Sector 17, Vashi, Navi Mumbai-400078 (represented by its Legal Counsel, Sri Shridhar Prabhu & Associates, Advocates, Bangalore).
2. The Chairperson, Consumer Grievance Redressal Forum, CESC, Mandya.
3. The Assistant Executive Engineer (Ele), O & M Sub Division-2, CESC, Malavalli, Mandya District.
4. Managing Directors of ESCOMs.
5. PS to Hon. Chairman, KERC
6. PS to Secretary, KERC

