

BEFORE THE ELECTRICITY OMBUDSMAN

No.16 C-1, Miller Tank Bed Area (Behind Jain Hospital)
Vasanthanagar, Bengaluru-560052.

Present: **R. Sharada,**
District Judge (Retd)
Electricity Ombudsman,
Case No. OMB/G/G-429/2021
Dated: 28.01.2022

In the matter of

Sri Srinivasdu S/o. Sri Gangaraju,
Gandhi Nagar, Jalahalli Camp,
Sindanoor,
Raichur District.

Represented by: -

Sri. Venkanna yenni, MA LLB (SBL),
Retd. Accounts Officer Vice President KEB PA,
RTI Activist, GESCOM Raichur,
R/o. H No. M-110, Nijalingappa Colony,
Raichur-584101. - Appellant
(The address of the Appellant is amended as per order
dated 02.02.2022)

Vs

- 1) Chairperson,
Consumer Grievance Redressal Forum (CGRF)
O & M Circle, GESCOM,
Near Basaveshwara Circle,
Opposite to LIC Office,
Raichur –584101.
- 2) The Assistant Executive Engineer (Elec),
O & M Sub-Division, GESCOM,
Sindanoor,
Raichur District. - Respondents

This Appeal/Representation preferred before this Authority by the Appellant Sri Srinivasudu through his representative by name Sri Venkanna yanni, Jalahalli Camp Sindanuru as per Clause 22.02 of KERC (CGRF & Ombudsman) Regulations, 2004 against the orders passed by the CGRF Raichur District vide order dated 16.03.2021, ಅಅ(ಬಿ)/ಉಲೆನಿ/ಹಿಆಸ/2020-21/CYS-47 in case No. CGRF 07/2020 with a prayer to set aside the orders of CGRF, Raichur District and pass an order of cancellation of the Back Billing Charges amount claimed against the Appellant without any justification in the interest of justice and equity.

- 1) The brief facts of the case are that the installation RR No. JCB24171 situated in Jalahalli Camp of Sindanuru Taluk which was serviced in the name of the Appellant. The installation was inspected by the Vigilance Staff on 13.12.2013 and found the unauthorized use of electricity. Accordingly, the Assessing Officer passed an order of Back Billing Charges including compounding charges to the tune of Rs. 1,20,390/-. Aggrieved by this order, challenging the legality of the Back billing charges, the Appellant had filed a complaint before CGRF Raichur in case No. 1/2019. The 1st Respondent had issued an endorsement dated 19.12.2019 stating that as per Notification issued by KERC, Bengaluru in

Notification No. D/02/03 dated 12.05.2004 (Notified in Karnataka Gazette on 10.06.2004), Page No. 1037-1044 2(g), the issue pending between the parties do not fall under the jurisdiction of CGRF, the Appellant/Complainant has to approach Appellate Authority as per Clause 44.01 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka for required remedy.

- 2) Aggrieved by this order the Appellant had approached this Authority in Case No. OMB/G/G-395/2020. After hearing both the parties my predecessor has passed orders by setting aside the orders passed by the 1st Respondent dated 19.12.2019, and the matter was remitted back to the CGRF, Raichur directing to dispose of the complaint in accordance with law and regulations keeping in mind the observations made in the order, thereby allowed the appeal.
- 3) Accordingly, the 1st Respondent has taken up the matter, notified both the parties, after hearing passed orders dated 16.03.2021 stating that as: -

“ದಿನಾಂಕ: 04.03.2021 ರಂದು ಪ್ರಕರಣವು ವೇದಿಕೆಯಲ್ಲಿ ಚರ್ಚಿಸಲಾಗಿ, ಸದರಿ ಪ್ರಕರಣವು ಕೆ.ಇ.ಆರ್.ಸಿ ಬೆಂಗಳೂರು-560001 Notification No. D/02/03 Dated 12.05.2004 (Notified in Karnataka Gazette on 10.06.2004, Page Nos. 1037-1044 2(g) ವಿದ್ಯುತ್ ಕಾಕ್ಕೆ ನಿಯಮ 135 ಮತ್ತು 139ರ ಪ್ರಕಾರ ಸಿ.ಜಿ.ಆರ್.ಫ್ ವ್ಯಾಪ್ತಿಗೆ ಒಳಪಡುವುದಿಲ್ಲವೆಂದು ವೇದಿಕೆಯ ಸದಸ್ಯರ ಸಮ್ಮುಖದಲ್ಲಿ ಅಭಿಪ್ರಾಯಪಡಲಾಗಿ ಈ ಪ್ರಕರಣವು

*“ಕಂದಾಯ ಮೇಲ್ಮನವಿ ಪ್ರಾಧಿಕಾರಿ” ವ್ಯಾಪ್ತಿಗೆ ಬರುತ್ತಿದ್ದು
ಸದರಿ ಪ್ರಕರಣವನ್ನು ಕೆ.ಇ.ಆರ್.ಸಿ ನಿಯಮ 44.01 ರಡಿಯಲ್ಲಿ
“ಕಂದಾಯ ಮೇಲ್ಮನವಿ ಪ್ರಾಧಿಕಾರಿ” ಇವರಿಗೆ 30 ದಿನಗಳೊಳಗೆ
ಹಿಂಬಾಕಿ ಪಾವತಿಸಿ ಮೇಲ್ಮನವಿ ಸಲ್ಲಿಸಲು ಸೂಚಿಸಲಾಗಿದೆ.”*

- 4) Aggrieved by this order once again the Appellant/Complainant had approached this Authority with this appeal on the following grounds: -
- a) The orders passed by the 1st Respondent is not in accordance with law, thereby liable to be set aside.
 - b) As per the directions given by the Ombudsman in case No. OMB/G/G-395/2020, the Appellant approached personally the Sub-divisional Officer, Sindanuru for settlement, but the Officer has specifically replied that there are no connected records in his office, since the claiming of BBC during 2013 by the Vigilance Staff at Raichur is not having any connected records and also no demand is made in the ledger as per the alleged vigilance report.
 - c) The Inspector of Police who issued notice after gap of nearly 7 years has not at all intimated the case to the respective Sub-division/section office along with the copy of the calculation sheet of the BBC, therefore, the sub-division office who is enforcing Officer for the BBC is also kept in dark for the last 8 years.

- d) No ledger demand is made at any point of time nor included the BBC amount in the regular monthly bills.
 - e) The Police Inspector Vigilance Staff though is not having any powers to issue notice directly to the Consumer ignoring Assessing Officer concerned. The said Police Officer has misused his office thereby issued notice.
 - f) None of the officers of the Vigilance, GESCOM and billing unit of GESCOM headed by the sub-divisional Officer has not passed any final assessment order as required under Regulations No. 29.03 of ESR. Thereby, the orders passed by the Police Inspector Vigilance Staff as well the 1st Respondent are not in accordance with law and liable to be set aside. With all this the Appellant prays to allow the appeal as prayed for in the interest of justice and equity.
- 5) This Authority has issued notice to the 2nd Respondent/AEE (Ele), O & M Sub-division, GESCOM, Sindanuru, Raichur. Though notice served on the 2nd Respondent and sufficient opportunity is given for him to appear before this Authority but he failed to be present and submit his defense before this Authority. Thereby, as per Clause 22.02 of KERC (CGRF & Ombudsman) Regulations, 2004, this matter has taken up for disposal.

- 6) Heard the arguments on behalf of the Appellant through his representative. Even at the time of submission of the arguments the 2nd Respondent was not present. Thereby, the arguments of the Respondent side is taken as nil.
- 7) Heard the arguments of the Appellant and perused the records.
- 8) At this stage the below mentioned points arose for my consideration.

- a) **Point No. 1:** - Whether the Appellant proves that the order passed by the 1st Respondent/CGRF in case No. ಅಅ(ಬಿ)/ಉಲೆನಿ/ಹಿಆಸ/2020-21/CYS-47, CGRF 07/2020, dated 16.03.2021 is not sustainable under law.

- b) **Point No. 2:** - What Order?

- 9) My answers to the points as stated below

- a) In the negative.
- b) As per final order, for the reasons made herein below: -

REASONS

- 10) During course of arguments the Representative of the Complainant/Appellant has submitted that the installation bearing RR No. JCB24171 situated in Jalahalli camp of Sindanuru Taluk belongs to the Appellant. Originally a notice was signed by the

Inspector of Police Vigilance under notice No. Nil dated 17.03.2019 which was served on the Appellant on 16.04.2019 in which an amount of Rs. 1,20,390/- was demanded towards payment of BBC including compounding charges. The Appellant was not at all aware that registration of a case against him during December 2013 but the Police Inspector issued notice for recovery of Back billing charges.

- 11) Aggrieved by the contents of the notice the Appellant had approached 1st Respondent in Case No. 01/2019 and then as per directions of the then Ombudsman in OMB/G/G-395/2020, another complaint in case No. 07/2020 is also taken up by the 1st Respondent but in both cases, the 1st Respondent has passed same orders without looking into the materials placed before him by the Appellant. The orders passed by the 1st Respondent is one sided and no procedure was followed. Hence having no any alternative, he has come up before this Authority with this appeal and he prays to allow the appeal in the interest of justice and equity.
- 12) In support of his arguments the Appellant has furnished xerox copy of the Police Notice dated 07.03.2019 calling upon the Consumer for payment of BBC along with compounding charges in Criminal Case No. 1127/2013, a copy of the order passed by the CGRF in

07/2020 dated 16.03.2021 and a copy of the order passed in OMB/G/G-395/2020 dated 08.09.2020.

- 13) On perusal of the available records in the above case, though the Respondent/AEE (Ele) has not appeared before this Authority to refute the contentions taken by the Appellant but it is the duty of the Authority to evaluate the legality of the order passed by the CGRF which is challenged here.
- 14) At the cost of repetition, the alleged facts of the case are on 13.12.2013 the Vigilance Staff inspected the installation bearing RR No. JCB24171 belonging to the Appellant/Complainant and found that there was theft of electricity committed by the Consumer. Accordingly, notice is issued to the Appellant/Complainant. These allegations falls under the provisions of Section 135 of Electricity Act, 2003.
- 15) The provisions under Section 151 of the Electricity Act, 2003 reads as follows: -

151. Cognizance of offences.- No Court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or licensee o the generating company, as the case may be, for this purpose:

[Provided that the Court may also take cognizance of an offence punishable under this

Act upon a report of a Police Officer filed under Section 173 of the Code of Criminal Procedure, 1973:

Provided further that a special Court constituted under Section 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial.]

16) On perusal of the provisions under Section 2(g) of circular Notification issued by KERC, Bengaluru in Notification No. D/02/03 dated 12.05.2004 (Notified in Karnataka Gazette on 10.06.2004), Page No. 1037-1044 which reads as follows: -

“2(g) ‘Complaint’ means any grievance made by a consumer with regard to supply of electricity by the 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:

- (1) unauthorized use of electricity as provided under section 126 of the Act*
- (2) offences and penalties as provided under section 135 to 139 of the Act*
- (3) accident in the distribution, supply or use of electricity as provided under section 161 of the Act.”*

Here it is clear that if there are allegations of theft or unauthorized use of electricity, only the Special Court constituted under Section 153 of Electricity Act is a competent court to proceed with the case and not otherwise. Hence, the findings given by the 1st Respondent in the impugned order is in accordance with law. Even the

Appellant has produced a copy of letter written by the Police Inspector, Vigilance Staff dated 08.05.2019 which shows that a criminal case in crime No. 1127/2013 filed under Section 135 of Electricity Act is pending before 1st Additional District and Sessions Court, Raichur. The letter speaks that FIR has been lodged and trail is pending before the special court.

- 17) The allegations made by the Appellant that the Police Inspector, Vigilance Staff has not empowered to issue notice to the Appellant, and he had not recognized the powers and duties of the Assistant Executive Engineer (Ele)/Assessing Officer, but these contentions are to be decided by the Competent Authority but not by the CGRF the 1st Respondent.
- 18) It is settled position of law that the provisions of Section 126 of the Electricity Act are not applicable in the case of theft of electricity under Section 135 of the Electricity Act. This view is supported by the decision of the Hon'ble High Court of Karnataka in case Gulbarga Electricity Supply Company Limited, Gulbarga Vs Sharanappa and Another reported in 2006 (6) Kar. L.J 286.
- 19) Therefore, as per the provisions discussed supra makes it clear that, if there are allegations of theft of electricity, the Special Court constituted under Section 153 of Electricity Act is competent to

take cognizance and the CGRF concerned has no powers to take up the dispute for adjudication. With this I hold that, the orders passed by the 1st Respondent is in accordance with law, hence, the interference of this Authority is not necessary and I answer Point No. 1 in negative.

- 20) **Point No. 2:** - As per discussions made herein above, I proceed to pass the following order: -

O R D E R

No. OMB/G/G-429/2021/D-09

Dated: 28.01.2022

The appeal filed by the Appellant is hereby dismissed.

The order passed by the First Respondent in case No. CGRF 07/2020, ಅಅ(ಬಿ)/ಉಲೆನಿ/ಹಿಆಸ/2020-21/CYS-47, dated 16.03.2021 is hereby confirmed.

Sd/-
(R. Sharada)
Electricity Ombudsman.

- 1) Sri Srinivasdu S/o. Sri Gangaraju,
Gandhi Nagar, Jalahalli Camp,
Sindanoor,
Raichur District.
- 2) Sri. Venkanna yenni, MA LLB (SBL),
Retd. Accounts Officer Vice President KEB PA,
RTI Activist, GESCOM Raichur,
R/o. H No. M-110, Nijalingappa Colony,
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- 3) Chairperson,
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O & M Circle, GESCOM,
Near Basaveshwara Circle,
Opposite to LIC Office,
Raichur –584101.
- 4) The Assistant Executive Engineer (Elec),
O & M Sub-Division, GESCOM,
Sindanoor,
Raichur District.
- 5) PS to Hon'ble Chairman, KERC
- 6) PS to Hon'ble Member (M), KERC
- 7) PS to Hon'ble Member (R), KERC
- 8) PA to Secretary, KERC.