

# 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/B/G-435/2021**

**Dated: 09/12/2021**

In the matter of

Smt. L. Vijayalakshmi,  
No. 78, 79-114-115, 4th Main,  
Srigandada Kavalu,  
Sunkadakatte,  
Bengaluru – 560 091.

**Represented by:**

Sri G.B. Revanaradhya,  
No. 3394, ‘Shanthi Nikethana’,  
3rd Cross, 6th Main,  
Hampinagar,  
Bengaluru-560 104.

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Appellant

Vs

- 1) The Assistant Executive Engineer (Ele),  
O & M N-8 Sub Division, BESCO,  
Srigandha Kavalu,  
‘D’ Group Layout,  
Bengaluru-560 091.

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Respondents

This Appeal is filed by the Complainant/Appellant under  
Regulation 21.3 of KERC (Consumer Grievance Redressal  
Forum and Ombudsman) Regulations 2004, with a prayer to

Cancellation of Back billing charges of Rs. 4,84,978/-in case No. CGRF 24/2020-21/06.08.2020, CP/CGRFBU/BWC/3410-11, dated 30.09.2021 passed by the CGRF Bengaluru Urban District of BESCOM in the interest of justice and equity.

- 1) It is the case of the Complainant/Appellant that, she is the registered Consumer of the power installations bearing RR No. N2P8790 & N2P8791. The premises of the Appellant has got 2 floors having ground and 1<sup>st</sup> Floor. The subject power installation is situated in the 1<sup>st</sup> floor bearing RR No. N2P8791 and another separate power installation bearing RR No. N2P8790 is in the ground floor.
- 2) It is further stated that the Appellant had let out the premises of 1<sup>st</sup> Floor to M/s. Ampolt Electronic India Private Limited headed by one Sri S Ravishankar. The unit was manufacturing solar panels and UPS units. The installation in the ground floor bearing RR No. N2P8790 has been serviced under LT-3 Tariff (Commercial Tariff), and the subject power installation bearing RR No. N2P8791 has been serviced under LT-5 Tariff (Industrial Tariff).
- 3) The Vigilance staff of BESCOM inspected the unit on 20.08.2018. At that time the ground floor was vacant. The

Appellant had permitted M/s Ampolt Electronic India Private Limited to utilize the vacant ground floor for keeping the solar panels in the ground floor before delivering the same to the purchasers. One staff by name Smt. Jayasheela of M/s Ampolt Electronic India Private Limited was made to sit in the ground floor to make the delivery of the solar panels. When the vigilance staff inspected the unit, they have misunderstood that the premises was being used as godown to store the panels. The staff who was sitting there then had replied that the working unit is in the first floor and the panels have been kept for making delivery to the purchasers in the ground floor. But the Vigilance Officer who visited the first floor did not verify any documents, instead prepared a Mahazar and obtained the signature of Smt. Jayasheela, the staff of M/s Ampolt Electronic India Private Limited duly informing that a letter will be sent by the sub division office.

- 4) Further it is stated accordingly, a letter dated 01.09.2018 was received in which it was informed that the installation has been back billed for Rs. 4,84,978/- for using the power for commercial purpose i.e., godown purpose. It was also informed to submit objections if any within 15 days or to pay the amount within 30

days. The head of M/s Ampolt Electronic India Private Limited by name Sri Ravishankar has submitted his objections dated 15.09.2018 along with necessary documents. Thereafter, he was called for a hearing by AEE (Ele), of N-8 Sub Division on 05.10.2018 again on 03.06.2019 finally the hearing was conducted on 13.06.2019. On that day the Director by name Sri Mohan Kumar and Technical Director by name Sri Hariprasad of M/s Ampolt Electronic India Private Limited have attended the hearing on behalf of Sri Ravishankar. The AEE (Ele), N-8 Sub Division who is also the Assessing Officer has not considered the objections of M/s Ampolt Electronic India Private Limited even he has not verified the documents submitted to him on 17.06.2019. But finally issued a Speaking Order bearing No. 2453 dated 01.10.2019.

- 5) Further it is stated, in the meanwhile, Sri Ravishankar has stopped production of solar panels and UPS units due to lack of orders and financial trouble, thereafter, vacated the premises without informing to the Appellant but handed over the keys through one of his staff. He sent message to adjust the advance amount paid to the Appellant towards rent to be paid. When the Appellant had visited her premises along with her husband and

found a letter fixed to the bolt of the door of the premises. That letter bearing No. 188 dated 08.05.2020 was termination notice issued from the Sub-Division. Thereby, she approached AEE (Ele), N-8 Sub-Division in that regard. In turn the AEE (Ele) advised to pay the amount in full under protest thereafter, submit an appeal before appropriate Authority.

- 6) Further it is stated that, the Appellant, accordingly had obtained loan from her Bank and paid the BBC amount in full under protest dated 24.07.2020. Thereafter, she submitted an appeal before CGRF of West Circle, BESCOM through her consultant on 06.08.2020. The Forum has issued orders on 30.09.2021 in which the complaint given by the Appellant has been dismissed since it does not come under the purview of the CGRF and to approach the appropriate Appellate Authority for redressal of the grievance. Aggrieved by the orders of the CGRF, the Appellant has preferred this appeal.
- 7) This Authority has issued notice to the Respondent i.e., AEE (Ele) N-8 Sub Division, BESCOM, he has appeared in person and filed objections. He stated that, it is true that the Appellant is the consumer of the premises bearing RR No. N2P8790 & N2P8791. The Appellant was sanctioned the power 15 HP + 15 KW to

bearing RR No. N2P8791 for running industry. Upon the receiving credible information on the allegations that the Consumer is misusing the electricity supply unauthorizedly in the premises thereby, on 20.08.2018 AEE (Ele), Vigilance, BESCOM have inspected the premises of the Appellant and found correct. Thereafter, he prepared mahazar taken signature of the staff of the M/s Ampolt Electronic India Private Limited the then consumer and issued tentative back bill for Rs. 4,78,657/- with direction to place objections within 15 days from the date of the receipt of the bill or to pay the amount within 30 days.

- 8) Further it is stated, the Assessing Officer/Vigilance have followed the provisions narrated in Regulation 42.02 of KERC (Conditions of Supply of Electricity Distribution in the State of Karnataka) Regulations 2006, thereafter, he has issued final Assessment bill, after ascertaining that the then Consumer was not running any manufacturing activities in the first floor but the said manufacture was going on in the ground floor. Further, it is stated that, the CGRF after verifying all the contents of the case, found that the Appellant has to approach proper Appellate Authority for her redressal of the grievance, since CGRF has no jurisdiction to entertain this kind of complaint under Section 126

of Electricity Act, accordingly, passed order. The orders passed by the CGRF is in accordance with law, hence he prays dismiss the appeal in the interest of justice and equity.

- 9) Heard the arguments, perusal of the records.
- 10) At this stage the below mentioned points arose for my consideration.

a) **Point No. 1:** - Whether the order passed by the No. CGRF 24/2020-21/06.08.2020, CP/CGRFBU/BWC/3410-11, dated 30.09.2021 is capricious, perverted and not sustainable under law, thereby the interference of this Authority is needed.

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

- 11) As per the discussions made herein above my answers to the above points are as below: -

- a) In Negative.
- b) As per final order for the reasons stated below.

### **REASONS**

- 12) During the course of the arguments, the representative of the Appellant has submitted that the Complainant/Appellant is a Consumer of Respondent bearing RR No. N2P8791. The installation was serviced on 09.06.2011 in her name with

sanctioned load of 15 KW + 15 HP under LT-5 Tariff. On 20.08.2018 this installation was inspected by the Assessing Officer i.e., AEE (Ele), BESCO, Vigilance and reported that the power supply obtained for industrial purpose under LT-5 Tariff is being misused for commercial purpose i.e., under LT-3 Tariff. Based on that a Provisional Assessment Notice dated 01.09.2018 of Back Billing Charges of Rs. 4,84,978/- is issued, an opportunity was given to file objections by the consumer. The consumer filed objections within stipulated time i.e., on 15.09.2017, but the Respondent herein has passed Speaking Order on 01.10.2019 by upholding the claims made in the Provisional Demand Notice and action taken to recover the same.

- 13) Further he submitted, the premises of the Appellant in the first floor was used for manufacturing of solar inverters thereafter, the finished products were kept in the ground floor. Based on the Vigilance report, the Respondent served a back billing notice on the Appellant, in turn, the Appellant had produced relevant documents along with photographs to the Respondent. The tenant M/s Ampolt Electronic India Private Limited had vacated the premises without giving any information to the Appellant thereby, as a registered consumer, the Appellant herself had paid

Rs. 5,31,057/- vide DD No. 134990 dated 23.07.2020 to get restoration of power supply. Thereafter, since aggrieved by the final BBC, she approached CGRF in Case No. CGRF 24/2020-21, but the CGRF without verifying the objections and documents produced by the Appellant dismissed the complaint stating that, it has no jurisdiction to proceed further and the Appellant has to approach proper Appellate Authority for her grievance. Further he submitted the findings given by the CGRF in the impugned order is not in accordance with law, hence, he prays to allow the appeal. In support of his arguments, he has relied upon the orders passed in WP No. 4423/2020 (GM-KEB) between Prashanth Shetty V/s BESCO & Other, dated 24.03.2021 and submitted in the said order the Hon'ble High Court of Karnataka has issued writ of mandamus to the AEE (Ele), BESCO to consider the objections filed by the Petitioner to the Provisional Assessment Order therein, and to pass Final Assessment Order after affording and opportunity of hearing to the Petitioner. This order of Hon'ble High Court is very much applicable to the case on hand.

- 14) Further in support of his arguments, he has produced the following documents: -
  - a) certified copy of the order in case No. CGRF 24/2020-21.

- b) Xerox copy of the Entrepreneurs Memorandum Part 2 acknowledgement issued by Government of Karnataka.
- c) Xerox copy of Value added tax registration certificate/Form VAT-7, dated 09.05.2012.
- d) Xerox copy of Registration Certificate showing that the M/s Ampolt Electronic India Private Limited is running its manufacture in the premises of the Appellant.
- e) Xerox copy of details of Manager/whole time Directors/key managerial persons of M/s Ampolt Electronic India Private Limited.
- f) Xerox copy of the certificate issued by Quality Control Certification dated 29.01.2018, which also shows that M/s Ampolt Electronic India Private Limited is running its manufacture activities in the premises of the Appellant.
- g) Xerox copy of the enlistment certification issued by NCIC.
- h) Xerox copy of the store details certificate issued by NCIC.
- i) Xerox copy of the letter dated 22.11.2010 written by CPRI to the M/s Ampolt Electronic India Private Limited to acknowledge the receipt of the test report along with test results as well as photographs.

- j) Xerox copy of the objections filed by the M/s Ampolt Electronic India Private Limited dated 15.09.2018 to the AEE (Ele), N-8 Subdivision, BESCOM.
- k) Xerox copy of the final back billing notice issued by AEE (Ele), N-8 Subdivision, BESCOM dated 01.09.2018 to the present Appellant demanding for payment of back billing charges within stipulated time therein.
- l) Xerox copy of the spot Mahazar (incomplete and not legible).
- m) Xerox copy of the inspection report pertaining to RR No. N2P8791, dated 20.08.2018.

Finally submitted that there were no manufacturing activities being done in the ground floor, the documents mentioned in (b) to (i) supra show that the manufacture of solar panels etc., were being done in the first floor by the M/s Ampolt Electronic India Private Limited, hence he prays to allow the appeal.

- 15) During the course of the arguments, the Respondent has submitted in the same lines as stated in the parawise remarks filed before this Authority and submitted the Vigilance staff of BESCOM has inspected the premises of the Appellant on the alleged date and found that the manufacturing activities were

going on in the ground floor of the premises and further found the power supply obtained for industrial purpose under LT-5 Tariff is being misused for commercial purpose i.e., under LT-3 Tariff. Accordingly, the Vigilance has taken steps as provided in Clause 42.02 and also 42.07 KERC (Conditions of Supply of Electricity Distribution in the State of Karnataka) Regulations 2006, thereafter, finally submitted a report. Basing on that report the Appellant was called for payment of BBC. When such being the situation this dispute will not fall within the jurisdiction of this Authority. Even the CGRF who has passed impugned order also found that it has no jurisdiction to entertain the complaint thereby, dismissed the complaint. The finding given by the CGRF are in accordance with law, hence interreference of this Authority is not warranted. With this the Respondent prays to dismiss the appeal in the interest of justice and equity.

- 16) In support of his arguments, he has produced true copies of the: -
- a) True copy of the draft bill issued by AEE (Ele) BESCO, Vigilance, Bengaluru.
  - b) True copy of the spot Mahazar dated 20.08.2018.
  - c) True copy of the inspection report dated 20.08.2018 pertaining to the installation bearing RR No. N2P8791.

- d) True copy of the report dated 30.08.2019 given by AEE (Ele) BESCOM, Vigilance to the AEE (Ele) BESCOM, N-8, Sub Division.
- e) True copy of the final back billing notice issued by AEE (Ele) N-9 Subdivision BESCOM dated 01.09.2018 to the present Appellant demanding for payment of back billing charges within stipulated time therein.

17) On perusal of entire records as well as the documents relied by both parties there is no dispute that Appellant is the owner and consumer of the premises bearing RR No. N2P8790 (LT-3 Tariff) & N2P8791 (LT-5 Tariff). It is also not in dispute that, the Appellant has given the first floor of her premises bearing RR No. N2P8791 to the M/s Ampolt Electronic India Private Limited on rental basis for manufacturing solar panels etc. As per the contents of the appeal it is forth coming that the Appellant has permitted M/s Ampolt Electronic India Private Limited to utilize the ground floor also. According to the Appellant, the said ground floor was being used only for keeping solar panels to distribute by the staff of the M/s Ampolt Electronic India Private Limited to the purchasers, as such there was no any manufacturing activities in the said ground floor. According to the sport Mahazar and

report submitted by the AEE (Ele) BESCOM, Vigilance, the ground floor was being used by the tenant of the Appellant for the purpose of manufacturing solar panels. In the said report it is clearly stated as: -

“ದಿನಾಂಕ: 21.08.2018 ರಂದು ಬೆಸ್ಕಾಂ ಜಾಗೃತದಳ ರಾಜಾಜಿನಗರ ಪೋಲೀಸ್ ಠಾಣೆಯ ಅಧಿಕಾರಿ ಮತ್ತು ಸಿಬ್ಬಂದಿಯೊಂದಿಗೆ ನಂ.78, 79, 4ನೇ ಮುಖ್ಯರಸ್ತೆ, ಶ್ರೀಗಂಧ ಕಾವಲ್, ಸುಂಕದಕಟ್ಟೆ, ಬೆಂಗಳೂರು ವಿಳಾಸದ ಸ್ಥಳಕ್ಕೆ ಭೇಟಿ ನೀಡಿ ಎಲ್. ವಿಜಯಲಕ್ಷ್ಮೀ ರವರ ಮಾಲೀಕತ್ವದ ಆಮ್‌ಲೆಟ್ ಎಲೆಕ್ಟ್ರಾನಿಕ್ಸ್ ಇಂಡಿಯಾ ಪ್ರೈ. ಲಿ., ಕಂಪನಿಯ ಕಟ್ಟಡವನ್ನು ಪರಿಶೀಲಿಸಲಾಗಿ, 1ನೇ ಮಹಡಿಯಲ್ಲಿ ಸೋಲಾರ್ ಇನ್‌ವೆಸ್ಟ್‌ಮೆಂಟ್‌ಗಳನ್ನು ಸರ್ವೀಸ್ ಮಾಡುವ ಕಾರ್ಯ ಚಟುವಟಿಕೆಯಾಗಿದ್ದು, ಇದು ಕಂಪನಿಯ ಮುಖ್ಯ ಕಛೇರಿಯಾಗಿದ್ದು, ನೆಲಮಹಡಿಯಲ್ಲಿ ಸೋಲಾರ್ ಇನ್‌ವೆಸ್ಟ್‌ಮೆಂಟ್‌ಗಳನ್ನು ತಯಾರು ಮಾಡುವ ಉತ್ಪಾದನಾ ಘಟಕ ಪ್ರಾರಂಭಿಸಲಾಗುತ್ತಿದೆ ಎಂದು ತಿಳಿಸಿರುತ್ತಾರೆ. ನಂತರ ಸದರಿ ನಂತರ ಕಂಪನಿಯ ವಿದ್ಯುತ್ ಸಂಪರ್ಕವನ್ನು ಪರಿಶೀಲಿಸಲಾಗಿ ಆರ್. ಆರ್. ನಂ. ಎನ್‌2ಬಿ-8791, ಸಿರಿಸ್ ಬಿ ಫೇಸ್, ಇಟಿವಿ, 3\*5ಎ, ಸಿರಿಯಲ್ ನಂ. 3129012 ಕೆಡಬ್ಲ್ಯೂಹೆಚ್ - 1751.30, ಕೆ-10 ಆಗಿದ್ದು, ಸಿರಿಯಲ್ ನಂ. 15 ಕಿಲೋವ್ಯಾಟ್ + 15 ಹೆಚ್.ಪಿ.ಇದ್ದು, ಎಲ್‌ಟಿ-5 ಜಕಾತಿಯಲ್ಲಿರುತ್ತದೆ. ಸದರಿ ಸ್ಥಾವರದಿಂದ 1ನೇ ಮಹಡಿಯಲ್ಲಿನ ಮೇಲ್ಕಂಡ ಕಂಪನಿಯ ಕಛೇರಿ+ಸರ್ವೀಸ್ ಸೆಂಟರ್‌ಗೆ ಸಂಪರ್ಕವಿರುತ್ತದೆ. ಇಲ್ಲಿ ಯಾವುದೇ ರೀತಿಯ ಉತ್ಪಾದನಾ ಘಟಕ ಇರುವುದಿಲ್ಲ. ಇಲ್ಲಿ ಸರ್ವೀಸ್ ಸೆಂಟರ್+ಕಛೇರಿ ಇರುವುದು ಕಂಡು ಬಂದಿರುತ್ತದೆ. ಸದರಿ ಸ್ಥಾವರವನ್ನು ಎಲ್‌ಟಿ-5 ರಿಂದ ಎಲ್‌ಟಿ-3 ಜಕಾತಿಗೆ ಬಳಕೆ ಮಾಡುತ್ತಿರುವುದು ಕಂಡು ಬಂದ ಮೇರೆಗೆ ಅಸಂಜ್ಞೆಯ ಪುನರಾವೇಶ ಸಂಖ್ಯೆ:16461/2018 ಅನ್ನು ದಾಖಲಿಸಿಕೊಂಡಿರುತ್ತದೆ.”

18) Now only question is arose that, whether the CGRF has jurisdiction to entertain the complaint filed by the Complainant/Appellant to decide the dispute pending between the parties.

19) I have perused the provisions laid down Clause 42.02 of KERC (Conditions of Supply of Electricity Distribution in the State of Karnataka) Regulations 2006, which reads as follows: -

*42.02 MISUSE OF ELECTRICITY*

*(a) If at any time, 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 unauthorized use of electricity has taken place and if, however, the period during which such unauthorized 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 the energy is misused.*

*The Consumer shall pay such amount within thirty days from the date of claim, failing which, the installation is liable for disconnection and such amount shall be deemed to be arrears of electricity charges.*

*2) The basis of assessing the period and the quantum of energy misused shall be recorded by the Assessing officer, and intimated to the Consumer. The Consumer shall be given an opportunity to verify the basis of assessing the period and quantum of energy misused and represent on the computed consumption.*

20) The Clause 42.07 of KERC (Conditions of Supply of Electricity Distribution in the State of Karnataka) Regulations 2006, reads as follows: -

*42.07 Provisional Assessment order on account of prejudicial use of power under Clause 42.01,42.02 & 42.05: -*

- 1) The Assessing officer shall serve the order of provisional assessment within 7 days from the date of inspection upon the person in occupation or possession or in charge of the place or premises within 15 days.*
- 2) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:*
- 3) The person, on whom the order served shall be entitled to file objections, if any, against the provisional assessment before the Assessing officer within 15 days, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within 30 days from the date of service of such order of provisional assessment of the electricity charges payable by such person.*
- 4) The Assessing officer shall indicate in the above order, the provisions of appeal under Clause 44.00 of these Conditions.*
- 5) Any person served with the final order of assessment, may, accept such assessment and deposit the assessed amount with the Licensee within 30 days of service of such final order of assessment order upon him.*
- 6) If the person served with the final order fail to deposit the assessed amount within 30 days, power supply to the installation shall be disconnected and such amount shall be deemed to be arrears of electricity charges.*
- 7) When a person defaults in making payment of the assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of receipt of the order of*

assessment, an amount of interest at the rate of sixteenth percent per annum compounded every six months.

21) The Clause 44.01 and 44.02 reads as follows: -

*44.00 APPEALS*

*44.01 Any person aggrieved by a final order made under the Condition 42.07 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as specified by the State Commission in KERC (Procedure for Filing Appeal before the Appellate Authority) Regulations, 2005{Annex-3} under intimation to the office of issue.*

*44.02 No appeal against an order of assessment under made as per Clause 42.07 of these Conditions shall be entertained unless an amount equal to half of the assessed amount as per Amendment vide Notification No. K.E.R.C./COS/D/07/08 Dated: 14.3.2008 published in Karnataka Gazette dated: 20.3.2008 (Old version: equal to one third of the assessed amount) is deposited in cash or by way of bank draft with the Licensee of such deposit has been enclosed along with the appeal."*

22) Section 126 of Electricity Act 2003, reads as follows: -

*126. Assessment: (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the Assessing Officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.*

*(2) The order of provisional assessment shall be served upon the person in occupation or possession or*

*in-charge of the place or premises in such manner as may be prescribed.*

- (3) The person, on whom an order has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the Assessing Officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.*
- (4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:*
- (5) If the Assessing Officer reaches to the conclusion that unauthorized use of electricity has taken place, the assessment shall be made 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 twelve months immediately preceding the date of inspection.]*
- (6) The Assessment under the section shall be made at a rate equal to [twice] the tariff applicable for the relevant category of services specified in sub-section (5).*

*Explanation: For the purposes of this section:*

- (a) "Assessing Officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;*
- (b) "Unauthorised use of electricity" means the usage of electricity.*
  - (i) by any artificial means; or*
  - (ii) by a means not authorized by the concerned person or authority or licensee; or*
  - (iii) through a tempered meter; or*

- (iv) for the purpose other than for which the usage of electricity was authorized; or
- (v) for the premises or areas other than those for which the supply of electricity was authorized.

23) Section 127 of Electricity Act, 2003 reads as follows: -

127. Appeal to Appellate Authority: - (1) Any person aggrieved by the final order made under Section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an Appellate Authority as may be prescribed.
- (2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount to [half of the assessed amount] is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

As per above provisions, complaint filed by the consumer with CGRF against demand on the allegation of unauthorized use of electricity and back billing payment, the forum has no jurisdiction to entertain such complaint. The only remedy is available to the consumer to prefer an appeal as provided in the Act. This view of mine is supported by the judgement passed by the Hon'ble High Court of Karnataka reported in 2006 (6) Kar. L.J. 286 held between Gulbarga Electricity Supply Company Limited, Gulbarga V/s Sharanappa and Another.

24) I have gone through the orders passed by the Hon'ble High Court of Karnataka WP No. 4423/2020 (GM-KEB) relied by

representative of the Appellant in which the Hon'ble High Court has also referred the orders of Hon'ble Apex Court in the case of Executive Engineer, Southern Electricity Supply company of Orissa Limited and another V/s Sri Seetharam Rice Mill reported in (2012) 2 SCC 108 in which Hon'ble Apex Court while considering the Section 126 of Electricity Act has explained unauthorized use of electricity at Para 61 as follows: -

*“61. Unauthorized use of electricity cannot be restricted to the stated clauses under the Explanation but has to be given a wider meaning so as to cover cases of violation of the terms and conditions of supply and the Regulations and provisions of the 2003 Act governing such supply. “Unauthorized rise of electricity” itself is an expression which would, on its plain reading, take within its scope all the misuse of the electricity or even malpractices adopted while using electricity. It is difficult to restrict this expression and limit its application by the categories stated in the Explanation. It is indisputable that the electricity supply to a consumer is restricted and controlled by the terms and conditions of supply, the Regulations framed and provisions of the 2003 Act.”*

The Hon'ble High Court of Karnataka basing on the above observation has held that a reading of the portion of the judgement makes it clear that unauthorized use of electricity would mean misuse of electricity or even malpractices adopted while using electricity further the Hon'ble High court has held that as per Supply Code 42.07 provides for assessment order on

account of prejudicial use of power under Clauses 42.01, 42.02 and 42.05 of KERC (Conditions of Supply of Electricity Distribution in the State of Karnataka) Regulations 2006. when a provisional assessment order is served on any person, he may accept such assessment or he could file objections if any against such provisional assessment within the time prescribed therein. Thereafter, the assessing officer shall afford a reasonable opportunity of hearing to such person and pass final order of assessment within the time prescribed therein. Further held that in the case referred about the Assessing Officer has not considered the objections of the consumer therein, thereby, the Hon'ble High Court was pleased to issued writ of mandamus to the 4<sup>th</sup> Respondent therein, to consider the objections filed by the Petitioner to the provisional assessment order thereafter, to pass final assessment order after affording an opportunity to the Petitioner therein.

- 25) In the present case on hand the Appellant has taken specific contention that before passing final assessment order, the Assessing Officer has not taken into consideration the objections filed by the Appellant as well as the documents produced by her. Such being the situation if the Appellant is aggrieved by the

orders of Assessing Officer, she/he has to approach proper Appellate Authority as required under Regulations detailed supra, but not CGRF. Considering all these facts and circumstances, as well as position of law, I am of the opinion that, the impugned order in case No. CGRF 24/2020-21/06.08.2020 passed by the CGRF is in accordance with law. Therefore, the interference of this Authority is not required. With this I answer Point No. 1 in Negative.

- 26) **Point No. 2:** - As per the discussions made herein above in Point No. 1, I proceed to pass the following order: -

**O R D E R**

**No. OMB/B/G-435/2021/D-1599**

**Dated: 09-12-2021**

The Appeal is filed by the Complainant/ Appellant under Regulation 21.3 of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2004, is dismissed.

The order passed by the CGRF in case No. CGRF 24/2020-21/06.08.2020, CP/CGRFBU/BWC/ 3410-11, dated 30.09.2021 stands confirmed.

Sd/-  
(R. Sharada)  
Electricity Ombudsman.

- 1) Smt. L. Vijayalakshmi,  
No. 78, 79-114-115, 4th Main,  
Srigandada Kavalu,  
Sunkadakatte,  
Bengaluru – 560 091.
- 2) Sri G.B. Revanaradhya,  
No. 3394, ‘Shanthi Nikethana’,  
3rd Cross, 6th Main,  
Hampinagar,  
Bengaluru-560 104.
- 2) The Assistant Executive Engineer (Ele),  
O & M N-8 Sub Division, BESCOM,  
Srigandha Kavalu,  
‘D’ Group Layout,  
Bengaluru-560 091.
- 3) Chairperson, Consumer Grievance Redressal Forum/(CGRF)  
Superintending Engineer (Ele.)  
West Circle Office, BESCOM,  
CA Site, No. 05, West of Chord Road,  
3<sup>rd</sup> Stage, Bhima Jyothi, HSBC Layout,  
Next to Chord Road Hospital,  
Basaveshwarnagar,  
Bengaluru Urban District,  
Bengaluru – 560079.
- 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.