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-492/2022
Dated: 29/11/2022

In the matter of

Sri S.S. Ganesh,
S/o Dr. Shamanur Shivashakrappa,
Partner of Lakshmi Floor Mill,
#3993/23, S.S Badavane, 'A' Block,
Davanagere - 577004.

Represented by:

Sri S. Umapathy, Advocate,
#3700, M.C.C.A Block,
Davanagere - 577004. **- Appellant/Complainant**

Vs

1) The Assistant Executive Engineer (Elec.),
O & M City Sub-division-1, BESCOM,
Davanagere - 577002.

Represented by:

Sri. M. Umesh,
Advocate,
Chitradurga – 577501.

2) The Chairperson, Consumer Grievance Redressal Forum/(CGRF),
Davanagere Circle Office, BESCOM,
Hadadi Road,
Davanagere – 577002. - **Respondents**

This Appeal is filed by the Complainant/Appellant under Regulation 42(6) of the Electricity Act, 2003 and KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004, against the orders passed by the 2nd Respondent in order No. 15548/52 dated 31.03.2022, with a prayer to set aside the impugned order of the 2nd Respondent/CGRF in the interest of justice and equity.

1) It is the case of the Complainant/Appellant that, the Appellant/Complainant is a registered Consumer of RR No. DHT-115. The 1st Respondent serviced power supply on 02.01.2017 under tariff HT-2(b)(i) for commercial purpose. Since, the date of service of RR No. DHT-115 i.e., from 02.01.2017 till 01.10.2020, the electricity charges monthly bills are being billed under the commercial tariff HT-2(b) and the payments have made according to the monthly bills serviced upon the consumer.

2) All of a sudden, the 1st Respondent served a letter dated 12.10.2020 to the Complainant/Appellant informing that to pay

Rs. 17,84,422/- stating that RR No. DHT-115 is billed under tariff HT-2(b)(i) from the date of service i.e., from 02.01.2017 to 01.07.2017 further, for the period from 01.08.2017 to 01.05.2018 while billing Manual Excel by over sight the tariff is changed to HT-2(c)(i) and in the said matter the Assistant Accounts Officer internal Audit has observed and informed to recover the tariff difference amount of Rs. 17,84,422/-.

3) The Appellant/Complainant has requested the 1st Respondent to furnish the details of RR No. DHT-115. On receipt of the said details by the Respondent No. 1, the Appellant/Complainant had submitted his objections for the alleged demand of Rs. 17,84,422/- on 05.01.2021 by flatly refusing for payment of the amount for the reasons that the electricity charges monthly bills from 02.01.2017 to 01.05.2018 and also till 01.10.2020 have been billed under the tariff HT-2(b) i.e., for commercial purpose, and that even between the alleged period of 01.08.2017 to 01.05.2018 the monthly electricity charges bills have also been served to the Appellant/Complainant mentioning in the tariff column of the said period i.e., from 01.08.2017 to 01.05.2018 as HT-2(b) under commercial tariff only.

4) The Respondent No. 1 is empowered to give surprise visit as well he himself takes the reading personally on 1st of every month and furnishes the reading pad to the Revenue Section to prepare and put up the monthly electricity bills for the observations such as readings, tariff applied and also the demand bills accuracy of amount and also to keenly observe the abnormal and subnormal variations of consumption charges if any. Thereafter, on satisfaction the Respondent No. 1 has to affix his signature and arrange to serve the said electricity monthly bills to the consumers in the larger interest of the consumer and the general public and also in the interest of Corporation. The very purpose of assigning the tariff is to prevent the unusualities and unwarranted activities and disputes. There was no occasion to apply any other tariff to RR No. DHT-115 under any circumstances onwards on 01.08.2017 to 01.05.2018.

5) If the installation was changed to other activities the tariff was also to be changed to the applicable tariff is a mandate under Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and also under Electricity Act, 2003 and the Tariff Orders, but the Appellant/Complainant has continued the

same premises for the same commercial purpose ever since availing the power supply till today.

6) As per the letter of the Respondent No. 1 dated 12.10.2020, that the tariff plea taken instead of HT-2(b) tariff under HT-2(c)(i) changed from 01.08.2017 to 01.05.2018 is false and unbelievable. It is only to safe guard the self-interest on the plea of Manual Excel billing which is far away from the truth.

7) The tariff HT-2(c)(i) is applicable only to Government Hospitals, Hospitals running by charitable institutions, ESI Hospital, universities and educational institutions belonging to the Government and local bodies, aided educational institutions and hostels of all educational institutions. On perusing of the tariff HT-2(c)(i) it is inadmissible and irrelevant to the premises of the Appellant/Complainant except HT-2(b) tariff as per monthly electricity charges bills. The Respondent No. 1 is a duty-bound competent Engineer who ought to have been vigilant and correcting the wrong immediately without causing any delay for 9 months (as per alleged period from 01.08.2017 to 01.05.2018). The electricity bills for this said 9 months also show that the tariff HT-2(b) is applied but not HT-2(c)(i). Mentioning one tariff in the

monthly electricity bill and demanding in the same bill in another tariff is not permissible under any provisions of law, thus the claim of the 1st Respondent is not maintainable according to electricity tariff and Conditions of Supply of Electricity of Distributions Licensees in the State of Karnataka and electricity Act, 2003.

8) All the monthly electricity consumption bills to the RR No. DHT-115 have been demanded and served by the Respondent No. 1 and also accepted the said payment without issuing any objections or correspondence till 12.10.2020, but the 1st Respondent vide letter No. 6782-84 issued a demand notice to the Appellant/Complainant only after the lapse of 3 years 2 months 11 days. As such the alleged demand of Rs. 17,84,422/- is barred by law of limitation. Hence, the Appellant/Complainant is not responsible or liable in any way to pay the said alleged unlawful demand. Hence the plea of erroneous and criteria cannot be a shelter or weapon to the Respondent No. 1 to defend his unjustifiable demand and it is not admissible as per the provisions of Conditions of Supply of Electricity of

Distributions Licensees in the State of Karnataka as well as Electricity Act, 2003.

9) On perusal of the bills of RR No. DHT- 115 of 01.06.2018 the act of 1st Respondent prima facia proves that the 1st Respondent had the knowledge and the notice of the alleged wrong billing committed by him in the previous bills i.e., from 01.08.2017 to 01.05.2018, but he has not issued any notice to the Appellant/Complainant even after having knowledge of alleged short claim till 12.10.2020. No single correspondence in the matter of alleged short claim is communicated by the 1st Respondent as first due, unless such sum have not at all been shown continuously as recoverable arrears of charges for electricity supply in any monthly electricity charges bills with effect from 01.08.2017 to 12.10.2020. It is to be noted that immediately after having notice of the alleged short claim for the period from 01.08.2017 to 01.05.2018 such sum becomes first due in the month of 01.08.2017 itself. Hence, the alleged short claim is illegal and barred by the period of law of limitation.

10) As per provisions under Clause 29.08 of Conditions of Supply of Electricity of Distributions Licensees in the State of Karnataka at

any time during verification of the consumer's account if any short claims caused by erroneous billing are noticed the consumer is liable to pay the difference. The Licensee shall follow the procedure laid down under Clause 29.03 in preparing the supplemental claims. However, the Licensee shall not recover any arrears after a period of 2 years from the date when such sum became first due, unless such sum has been shown continuously in the bill as recoverable as arrears of the charges of electricity supplied. In the case on hand, before the verification of the consumer's account by the internal audit staff the Respondent No. 1 has billed the electricity charges to the RR No. DHT-115 in the appropriate tariff assigned by the Licensee i.e., HT-2(b) as commercial tariff as billed from the date of service. Whereas, with effect from 01.08.2017 to 01.05.2018 the Respondent No. 1 has applied his own method of tariff in billing which is irrelevant and inapplicable tariff of HT-2(c)(i) to the installation of the Appellant/Complainant. Again from 01.06.2018 the Respondent No. 1 continued the electricity charges billing in the appropriate tariff under HT-2(b) till 12.10.2020. The said act of the 1st Respondent prima facie evidences that he has not stick-on

Sections 61 & 62 of the Electricity Act, 2003 along with the directions of KERC Authorities. The Respondent No. 1 has adopted his own method as per his whims and fancies which has resulted to cause the unnecessary torcher and harassment to the Appellant/Complainant, for such act of the 1st Respondent, the Appellant/Complainant is not at all responsible and payable the said alleged amount to the Respondents. As per Section 56(2) of the Electricity Act 2003 such sum becomes first due on 01.08.2017 only. Section 56(2) of the Electricity Act defines that no sum due from any consumer under the Section shall be recoverable after the period of 2 years from the date of when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supply and the Licensee shall not cutoff supply of electricity.

11) In this connection the act of the 1st Respondent is apparently illegal and barred by law of limitation and also under Section 56(2) of the Electricity Act, 2003 and also under Clause 29.8 of the Conditions of Supply of Electricity of Distributions Licensees in the State of Karnataka. Viewing from any angle for these reasons the claim made by the 1st Respondent is not maintainable in the

eye of law and Appellant/Complainant is not responsible to make payment of arrears of Rs. 17,84,422/-. Hence, he prays to allow the appeal by setting aside the order of the 2nd Respondent in the interest of justice and equity.

12) This Authority has issued notice to the Respondents. The 1st Respondent has appeared before this Authority through his Advocate and filed written reply by way of parawise comments.

13) In the reply the 1st Respondent has stated that, the claim of the Appellant/Complainant is not maintainable either in law or on facts, thereby, liable to be dismissed.

14) Further stated that the Appellant/Complainant is the Consumer of the installation bearing RR No. DHT-115 and the same has been serviced on 02.01.2017 under tariff HT-2(b)(i) for commercial purpose. There is no dispute to this extent.

15) From the date of service i.e., from 02.01.2017 to 01.07.2017 the installation was billed under HT-2(b)(i) tariff at the rate of prevailing consumption charges and fixed charges as per the KERC Tariff Order. From 01.08.2017 to 01.05.2018 this installation was billed at the rate of Rs. 6.40/unit for the consumed units and Rs. 200/KVA as fixed charges and payments

have been made for these bills instead of Rs. 8.45/unit for the consumed energy and Rs. 230/KVA for the demand charges and bills which amounts to short claim.

16) The 1st Respondent has served letter to the Appellant/Complainant on 12.10.2020 vide letter No. 6782-84 informing that based on the internal Audit staff, BESCOM Division Office, Davangere to pay the difference amount of Rs. 17,84,422/-. But the Appellant/Complainant had refused the payment of difference amount of Rs. 17,84,422/- through a letter dated 05.01.2021.

17) Actually, the Appellant/Complainant was given wrong statement regarding installation i.e., from 01.08.2017 to 01.05.2018. As stated supra during this period the installation was billed at the rate of Rs. 6.40/unit for the consumed energy and Rs. 200/KVA as demand charges instead of Rs. 8.45/unit for the consumed energy and Rs. 230/KVA as demand charges, but the tariff was shown as HT-2(b)(i) in the tariff column because from 01.08.2017 the billing system had changed from 3 zone billing parameters to 4 zone billing parameters and software had also changed.

18) During that period the ledger clerk has first billed the RR No. DHT-114 under HT-2(c) tariff which was Government ESI Hospital. While preparing the bills for the RR No. DHT-115 installation which is next RR number to the ESI Hospital was belongs to the Appellant/Complainant. Since during this time billing method and billing software changed, under the work pressure the billing case worker/Senior Assistant/Assistant Accounts Officer had made the copy and paste of the rates of RR No. DHT-114 to the RR No. DHT-115. And the rates which were pasted were belonging to HT-2(c)(i) tariff and prepared the erroneous bill. The Respondent No. 1 and his office staff were also under work pressure as they have to complete the reading of all the sub-divisions HT installations in the first day of every month, wrongly prepared the bills. The preparation of bill is involved in both administrative and technical staff.

19) The 1st Respondent office had shown HT-2(b)(i) tariff in the tariff column of all the bills which were served to the Appellant/Complainant. But billed at the lower rate of Rs. 6.40/unit for the consumed energy and Rs. 200/KVA as demand charges. The said Accounts Officer had billed the

installation for the lower rates by over sight which is clerical mistake. He has not changed the tariff by his whims and fancies. It is liability and natural justice that the consumer has to pay the difference amount of Rs. 17,84,422/- and they have not made any false or assumption amount. It is the amount of the actual consumption consumed by the Appellant.

20) It is stated that while availing the power supply the Appellant/Complainant or any consumer has to execute an agreement with the Licensee stating that the Consumers are ready to pay any of erroneous or difference amount in future which may arise in any manner. It is a fact that the Appellant/Complainant had consumed the energy for which the difference amount was raised, hence, it is the responsibility of the Appellant/Complainant to pay the difference amount. The Respondents have not levied any interest or penalty for this amount.

21) It is stated that erroneous bill of the Appellant/Complainant's installation came to the knowledge of the 1st Respondent only after auditing of the bills by the Internal Audit Staff and during the month of August 2020 the Audit Staff had found that

Appellant/Complainant's installation was billed at lower rate. Soon after the observation the 1st Respondent has served a notice to the Appellant/Complainant dated 12.10.2020 for payment of difference amount of Rs. 17,84,422/-. Further, the then existing AEE (Ele) had been transferred on 02.05.2019 and new AEE (Ele) resumed the office from 02.05.2019, this is also one of the main reasons for delay in procedures.

22) The 1st Respondent had requested the Appellant/Complainant through a letter dated 09.02.2021 to pay the said difference amount vide letter No. 11115-16. But the Appellant/Complainant is responsible and liable to pay erroneous amount as per judgement of Hon'ble High Court of Karnataka in Writ Petition No. 17225/2007 dated 05.11.2008 as the period of 2 years has to be counted from the date on which Licensee Company came to know of such short claim.

23) The Hon'ble Supreme Court had given the judgement in Civil Appeal No. 7235/2009 dated on 05.10.2021 in which the Hon'ble Apex Court has held that "Section 56(2) of the Electricity Act, 2003 does not apply in the case where a Licensed Electricity

Distribution Company under the Electricity Act raises an additional bill after detecting a mistake".

24) All the details pertaining to the Appellant/Complainant's installation such as sanctioned load, tariff, meter constant, addressee etc., are computerized in the system at sub-division level only. On every first day of every month AEE (Ele) usually takes the readings of the HT installations manually and entered in the reading book. The said reading book will be submitted to the concerned case worker to prepare final bills and thereafter such final bills will be issued to the concerned consumers. This is the procedure the office of the 1st Respondent has to follow in the sub-division level. The proposed mistake by the 1st Respondent is beyond their control because all the alleged proceedings have done in the computer process. The Respondent No. 1 issued a final notice to the Appellant/Complainant dated 09.02.2021 to pay the difference amount. But the Appellant/Complainant had approached the CGRF instead of making payment. After hearing the CGRF passed final judgement dated 31.03.2022 rejecting the complaint of the Appellant/Complainant and further directing the Licensee to recover difference amount as per norms. But the

Appellant failed to comply the directions of CGRF, per-contra he had approached this Appellate Authority.

25) The appeal is not maintainable, the grounds urged in the appeal devoid of merits, there is no legal ground to set aside the orders of the 2nd Respondent, even the Appellant/Complainant had not spelled a single word about illegality or incorrectness or error committed by the 2nd Respondent while passing impugned order. Under these circumstances the appeal is liable to be dismissed. With this the 1st Respondent prays to dismiss the appeal by upholding the orders of the 2nd Respondent in the interest of justice and equity.

26) Both Learned Counsel for Appellant/Complainant and Respondent No. 1 have submitted their arguments along with written submissions.

27) Heard the arguments, and perused the records.

28) At this stage the below mentioned points arose for my consideration.

a) **Point No. 1: -** Whether the 1st Respondent had applied wrong billing tariff on account of mistake in the electricity bills pertaining to the

Appellant/Complainant's installation from 01.08.2017 to 01.05.2018 under HT-2(c)(i) instead of HT-2(b)(i) of KERC Tariff Order?

b) **Point No. 2: -** Whether the claim of the 1st Respondent is within the period of limitation as per Section 56(2) of Electricity Act, 2003?

c) **Point No. 3:-** Whether the Appellant/ Complainant is entitled to the relief as sought for?

d) **Point No. 4: -** What Order?

29) My answers to the points as stated below: -

a. **Point No. 1 & 2: -** In affirmative.

b. **Point No. 3: -** As per final order, for the reasons made herein below: -

REASONS

30) **Point No. 1 & 2: -** These 2 points are taken up for common discussion in order to avoid repetition of facts.

31) During the course of arguments, the Counsel of the Appellant/Complainant has submitted that he has filed this appeal aggrieved by the orders passed by the 2nd

Respondent/CGRF dated 31.03.2022. Further stated that he is the registered consumer of the HT installation bearing RR No. DHT-115. The Respondent No. 1 has serviced this installation on 02.01.2017 in HT-2(b), the commercial tariff and also billed monthly electrical charges in the same tariff from 02.01.2017 till date. The Appellant/Complainant has been making payments of the electrical charges promptly to the office of the 1st Respondent. Inspite of that the 1st Respondent has issued demand notice vide letter No. 6782-84 dated 12.10.2020 stating that the electricity charges of the Appellant/Complainant's installation has been billed under the tariff of HT-2(c)(i) instead of HT-2(b) for a period from 01.08.2017 till 01.05.2018. Again, as per the say of the Respondents that the electricity bills for the Appellant/Complainant's installation from 01.06.2018 to till date are being prepared under Tariff HT-2(b) only, it means the 1st Respondent has came to know about the error committed by him as well as his staff concerned while preparing bill dated 01.06.2018, but the 1st Respondent kept aloof all these days. After lapse of 3 years 2 months 11 days the 1st Respondent has issued this demand notice stating that this mistake had come to

his knowledge at the time of Internal Audit of the office of the 1st Respondent. Further argued that since the date of service i.e., from 02.01.2017 till 01.10.2020 the electricity charges are being billed under the commercial tariff HT-2(b)(i) only and the payments have been made accordingly as per monthly bills served upon the Appellant/Consumer. Such was the situation all of a sudden, the 1st Respondent has served letter dated 12.10.2020 to the Appellant/Complainant informing that to pay Rs. 17,84,422/- stating that the RR No. DHT-115 is billed under tariff HT-2(b)(i) from the date of service till 01.07.2017 further for the period from 01.08.2017 to 01.05.2018 while billing, Manual Excel by oversight the tariff is changed to HT-2(c)(i) and in the said matter the Assistant Accounts Officer, Internal Audit has observed and informed the 1st Respondent to recover the tariff difference amount of Rs. 17,84,422/-. The Appellant/Complainant has submitted his objections dated 05.01.2021 and refused to make payment of the demand amount because in all the electricity charges monthly bills from 02.01.2017 till 01.10.2020 have been billed under the tariff HT-2(b), commercial purpose which could be seen in the tariff column of the respective bills.

32) It is further argued that the 1st Respondent/Licensee having the powers of surprise visits and inspections for confirmation of changes in power usage if any in consuming the electricity for other than the sanctioned tariff and to observe for unauthorized extensions if any and also to prevent the pilferage of electricity in the interest of company. The 1st Respondent himself takes the reading personally on 1st of every month and furnishes the reading pad to the Revenue Section to prepare the monthly electricity bills for observations and also the demand bills accuracy of amount and also to keenly observe the abnormal and subnormal variations of consumption charges if any. After observing all these facts the Licensee has to affix his signature and arrange to serve the said electricity bills to the consumers concerned. The very purpose of assigning the tariff is to prevent the unusualities and unwarranted activities as well as disputes between the parties. Similar system and procedure is adopted by the 1st Respondent and there is no occasion to apply any other tariff to RR No. DHT-115, under any circumstances, onwards on 01.08.2017 to 01.05.2018 in any manner. If the tariff HT-2(c)(1) was presumed and billed for the alleged period of 01.08.2017 to

01.05.2018 continuously for a period of 9 months by the 1st Respondent it amounts to negligency and violation of the provisions of Tariff Order as well as Conditions of Supply of Electricity of Distributions Licensees in the State of Karnataka which is against to the principles of Natural Justice. Inspite of submission of objections to the 1st Respondent dated 05.01.2021, the 1st Respondent has issued letter dated 09.02.2021 and demanded to make payment towards short claim of Rs. 17,84,422/-. Aggrieved by this order the Appellant/Complainant has filed a complaint before CGRF, Davanagere, but the 2nd Respondent/CGRF without looking into the facts and circumstances of the case as well as the provisions of law laid down under Section 56(2) of Electricity Act, 2003 and Regulations 29.08(a) of the Conditions of Supply of Electricity of Distributions Licensees in the State of Karnataka and also the judgements of the Hon'ble High Court of Karnataka passed impugned order dated 31.03.2022 vide order No. 15548-52, which is against to law and Natural Justice. Aggrieved by this order the Appellant/Complainant has approached this Authority with this appeal.

33) In support of his arguments, the Appellant has produced below mentioned documents as well as the decisions of Hon'ble Supreme Court & Hon'ble High Courts.

List of documents: -

1. Copy of the letter dated 26.08.2021 written by the Managing partner of the Appellant/Complainant to 1st Respondent/AEE (Ele) with a request to provide certified copy of the extract of HT reading pad of RR No. DHT-115 for a period from 02.01.2017 till 01.07.2018.
2. Copy of the letter dated 28.03.2022 written by the Managing partner of the Appellant/Complainant to 1st Respondent/AEE (Ele) with a request to provide certified copy of the extract of HT reading pad of RR No. DHT-115 for a period from 02.01.2017 till 01.07.2018.
3. Copy of the letter dated 12.05.2022 written by the Managing partner of the Appellant/Complainant to 1st Respondent/AEE (Ele) with a request to provide certified copy of the extract of HT reading pad of RR No. DHT-115 for a period from 02.01.2017 till 01.07.2018.
4. Copy of the reply letter dated 23.05.2022 written by BESCOM to the Appellant/Complainant furnishing xerox copies of the reading pad for a period from 02.01.2017 to 01.07.2018.
5. The letter dated 02.06.2022 written by the Managing partner of the Appellant/Complainant to 2nd Respondent/CGRF with a request to provide certified copy of the reading pad including tariff pertaining to RR No. DHT-115 for a period from 01.02.2017 till 01.01.2019.
6. Copy of the letter dated 12.10.2020 written by 1st Respondent/AEE (Ele) to Appellant/Complainant to make payment of short claim of Rs. 17,84,422/- for the

period i.e., from 01.08.2017 to 01.05.2018 (preliminary demand notice).

7. Electricity bills from 01.02.2017 till 01.10.2020.
8. Copy of the complaint filed before CGRF dated 10.03.2021.
9. Copy of the complaint filed before CGRF dated 23.02.2022.
10. Copy of the complaint filed before CGRF dated 07.03.2022.
11. The letter dated 08.04.2022 written by BESCOM to the Appellant/Complainant furnishing xerox copy of the reading pad for a period from 02.01.2017 to 01.07.2018.
12. Copy of the letter dated 09.02.2021 written by 1st Respondent/AEE (Ele) to Appellant/Complainant to make payment of short claim of Rs. 17,84,422/- for the period i.e., from 01.08.2017 to 01.05.2018 (final demand notice).
13. Copies of the electricity bills from 01.11.2020 & 01.12.2020.
14. Copy of the reply letter from Appellant/Complainant to 1st Respondent/AEE (Ele) dated 05.01.2021 refusing to make payment of short claim.
15. Copy of the application dated 10.03.2021 filed by the Complainant before 2nd Respondent/CGRF to pass interim order not to disconnect power supply.
16. The letter dated 15.11.2021 from Appellant/ Complainant to 1st Respondent/AEE (Ele) for not to proceed to take any action till final orders passed by the 2nd Respondent/CGRF.
17. Copy of the letters dated 14.12.2021, 07.01.2022 and 10.02.2022 from Appellant/Complainant to 1st Respondent/AEE (Ele) stating that inclusion of short claim amount in the regular future electricity bills amounts to Sub Judice.
18. Copy of the working instructions manual sub-division issued by KPTCL – Activity 2 - Maintenance of Revenue ledger.

19. Copy of the final order dated 31.03.2022 issued by 2nd Respondent/CGRF.
20. The letter written by BESCOM to Appellant/ Complainant dated 21.06.2022 demanding him to make payment as per orders of 2nd Respondent/CGRF.
21. Copy of the tariff order issued by KERC for the period from 01.04.2018 onwards (2 sheets).
22. Copy of the Law of Electricity in India Act (2 sheets).
23. Copy of the statement showing the short claim amount demanded.
24. Copy of the Conditions of Supply of Electricity of Distributions Licensees in the State of Karnataka (4 sheets).

34) The Appellant/Complainant has relied upon the following judgements: -

1. The judgement passed by the Hon'ble Supreme Court of India in Civil Appeal No. 7235/2009, in M/s Prem Cottex Vs Uttar Haryana Bijli Vitaran Nigam Ltd & Others, dated 05.10.2021.
2. The judgement passed by the Hon'ble Supreme Court of India in Civil Appeal No. 1672/2020, in Assistant Engineer (D1), Ajmer Vidyuth Vitharan Nigam Ltd & Another Vs Rehamatullah Khan alias Rahamjualla, dated 18.02.2020.
3. The orders passed by Hon'ble High Court of Karnataka, Bengaluru, in Writ Petition No. 17225/2007 (GM-KEB), held between BESCOM Vs M/s Ghousia College of Engineering, Ramanagara & Another, dated 05.11.2008.
4. The judgement in AIR 2007 Bombay 52, Awadesh S Pandey Vs Tata Power Company Ltd & Others, in WP (L) No. 2221/2006, dated 05.10.2006.
5. The judgement in AIR 2007 Bombay 73, Brihanmumbai Municipal Corporation Vs Ytish Sharma & Others, in WP No. 264/2006, dated 18.01.2007.

6. AIR 2007 Calcutta 203, Mahesh Oil Mil and Another Vs State of West Bengal and Another, in WP No. 516/2005, dated 19.02.2007.

Basing on these judgements the Learned Counsel for the Appellant/Complainant has submitted to set aside the orders of the 2nd Respondent dated 31.03.2022 by allowing the appeal in the interest of justice and equity.

35) The Learned Counsel for the 1st Respondent during the course of arguments has submitted that it is true to say that the Appellant/Complainant is a consumer of RR No. DHT-115 got serviced power supply on 02.01.2017 under tariff HT-2(b)(i) for commercial purpose, under contract demand of 500KVA. From the date of service till 01.07.2017 this installation was billed under HT-2(b)(i) tariff at the rate of prevailing consumption charges as well as fixed charges as per the KERC, Tariff Order.

36) Further submitted that from 01.08.2017 to 01.05.2018 this Installation was billed at the rate of Rs. 6.40/unit for the consumed units and Rs. 200/KVA of fixed charges instead of Rs. 8.45/unit for the consumed energy and Rs. 230/KVA for the demand charges. It amounts to short claim.

37) Further submitted that the Respondent has served a notice to the Appellant/Complainant on 12.10.2020 informing that based on the Internal Audit, BESCOM Division Office, Davangere to pay the difference amount of Rs. 17,84,422/-. The Appellant/ Complainant has requested to furnish details of Installation of DHT-115, hence, the 1st Respondent has furnished the required details to the Appellant/Complainant on 26.11.2020. On receipt of the information the Appellant/Complainant has filed his objections to the demand notice dated 12.10.2020 and refused to make payment of Rs. 17,84,422/-.

38) From 01.08.2017 to 01.05.2018 the installation was billed at the rate of Rs. 6.40/unit for the consumed energy and Rs. 200/KVA as demand charges but it has shown as HT-2(b)(i) in tariff column of the respective bills. The reason behind is, from 01.08.2017 the billing system has been changed from 3 zone billing parameters to 4 zone billing parameters, accordingly software got changed. During this period the Ledger Clerk had first billed RR No. DHT-114 under HT-2(c) tariff which was Government ESI Hospital. During this period because of billing software changed and also under work pressure the billing case worker had made

the copy and paste of the rates of RR No. DHT-114 to the RR No. DHT-115. The rates made in electric bills from 01.08.2017 to 01.05.2018 were belonging to HT-2(c)(i) tariff and prepared the erroneous bill and served on the consumer. This is the only mistake was committed by the case worker and billed the installation at lower rates by oversight and it is only a clerical mistake.

39) He further submitted that while availing the power supply the Appellant/Complainant or any consumer has to execute an agreement with Licensee stating that the consumers will be ready to pay any erroneous or difference amount in future which may arise in any manner. The statements made by the office of the 1st Respondent in the letter dated 12.10.2020 is correct and relevant. The mistake made by the Office of the 1st Respondent is only the calculation mistake which has to be rectified. It was unknowing mistake and nobody was aware about this in the Office of the 1st Respondent until the Internal Audit staff audited the bills in the month of August 2020. It is a fact that the consumer has consumed the energy and difference amount arrived after the Internal Audit process and only calculation

mistake had happened. It is the liability as well as responsibility of the Appellant/Consumer to pay the difference amount towards electricity charges to the extent that what he had consumed. Soon after observation made by the Internal Audit staff a notice is serviced on the Appellant/Complainant dated 12.10.2020 and demanded to make payment of difference amount of Rs. 17,84,422/-. But the Appellant/Complainant has not made payments, filed objections on 05.01.2020 to the notice dated 12.10.2020. Thereafter the 1st Respondent has sent a letter to the Appellant/Complainant dated 09.02.2021 to make payment of Rs. 17,84,422/-. The 1st Respondent had approached the CGRF Davangere against the orders of the 1st Respondent by filing a complaint. After hearing both the parties the CGRF has passed orders dated 31.03.2022 directing the Appellant/Complainant to pay the short claim amount of Rs. 17,84,422/-. The orders passed by the CGRF is in accordance with law.

40) In support of his arguments, the 1st Respondent has produced below mentioned documents as well as the decisions of Hon'ble Supreme Court & Hon'ble High Court of Karnataka: -

The list of documents: -

1. Copy of the Electricity bills from 01.02.2017 to 01.07.2017 – Annexure R1.
2. Copy of the Electricity Tariff Order - 2018 of KERC Order dated 11.04.2017 (5 sheets).
3. Copy of the electricity bill dated 01.06.2018 (corrected).
4. Copy of the electricity bill dated 01.08.2017 (TOD meter details).
5. Copy of the electricity bills dated 01.09.2017, 01.10.2017, 01.11.2017, 01.01.2018, 01.02.2018, 01.03.2018, 01.04.2018, 01.05.2018.
6. Copy of the preliminary supplementary demand notice dated 12.10.2020 & Copy of the statement showing the short claim amount demanded – Annexure-R2
7. Copy of the letter written by Respondent No. 1/AEE to Appellant/Complainant dated 26.11.2020 stating to have furnished copy of the record pertaining to DHT-115 - Annexure-R3.
8. Copy of the letter written by the Appellant/Complainant to AEE dated 05.01.2021 (received on 07.01.2021) refusing to make payment of short claim – Annexure-R4.
9. Copy of the letter dated 09.02.2021 written by 1st Respondent/AEE (Ele) to Appellant/Complainant to make payment of short claim of Rs. 17,84,422/- for the period i.e., from 01.08.2017 to 01.05.2018 – Annexure-R5.
10. Copy of the orders passed by Hon'ble High Court of Karnataka in Writ Petition No. 17225/2007 (GM-KEB), dated 05.11.2008– Annexure-R6
11. Copy of the letter dated 01.01.2009 written by MD, BESCOM to the MD, MESCOM, CESC, HESCOM & GESCOM dated 01.01.2009 with a request to circulate the copy of the judgement passed by Hon'ble High Court of Karnataka in Writ Petition No. 17225/2007 (GM-KEB), dated 05.11.2008 – Annexure-R7

41) The 1st Respondent has relied upon the following judgements: -

1. Copy of the letter written by GM (Technical), BESCOM to the 2nd Respondent/CGRF dated 01.01.2009 with a copy of the judgement passed by Hon'ble High Court of Karnataka in Writ Petition No. 17225/2007 (GM-KEB), dated 05.11.2008– Annexure-R8
2. Copy of the judgement passed by the Hon'ble Supreme Court of India, Civil Appeal No. 7235/2009, dated 05.10.2021 – Annexure-R9
3. Copy of the letter written by 1st Respondent/AEE (Ele) to Appellant/Complainant dated 21.06.2022 demanding him to make payment as per orders of CGRF – Annexure-R10.

Basing on these judgements he has submitted that the period of 2 years has to be counted from the day on which Licensee Company had come to know of such short claim. In Civil appeal No. 7235/2009, the Hon'ble Supreme Court has held that Section 56(2) of the Electricity Act 2003 does not apply in the case where a Licensed Electricity Distribution Company raises an additional bill under the Electricity Act after detecting a mistake. Viewing from any angle the Appellant/Complainant is responsible to make payments of difference tariff amount of Rs. 17,84,422/- as per orders passed by the 2nd Respondent. With this he prays to dismiss the appeal by upholding the orders of the 2nd Respondent in the interest of justice and equity.

42) On perusal of entire case papers, documents produced before this Authority, it appears that in this case there are only 2

questions arise before this Authority, that (i) whether the Licensee had prepared bill by applying tariff as HT-2(c) instead of HT-2(b), though noting as HT-2(b) in tariff column of the alleged electrical bills i.e., from 01.08.2017 to 01.05.2018, it has happened due to clerical mistake committed by the Revenue Staff of the 1st Respondent and this mistake is bonafide and came to light only at the time of Internal Audit conducted by Audit Staff of the 1st Respondent. Hence, the Appellant/Complainant is liable to pay difference of tariff as per letter dated 09.02.2021. Another question is (ii) whether the 1st Respondent can claim the supplemental demand from the Appellant/Complainant as per Section 56(2) of Electricity Act, 2003 R/W Clause 29.08(a) of Conditions of Supply of Electricity of Distributions Licensees in the State of Karnataka.

43) Before taking up these points for discussion this Authority wishes to look into the procedure followed by the CGRF/Respondent No. 2 in conducting proceedings pertaining to the complaint filed by the Complainant/Appellant i.e., in receiving, registering as well as disposal of the present impugned case. In this regard, I wish to reiterate the provisions laid down in Regulations No. 6, 7 & 8 of

KERC (CGRF & Ombudsman) Regulations, 2004 which reads as follows: -

> *"6. Procedure for Grievance Redressal and lodging complaints*
>
> *6.1. In the event of a complaint not being redressed satisfactorily as provided in the complaints Handling and Redressal Standards Relating to Distribution and Supply (Standards of Performance) of Power issued by the Commission, shall submit his grievance to the Forum not later than ONE (1) month from the date of lodging of the grievance with the licensee.*
>
> *6.2. Every grievance lodged with the Forum shall be in writing and shall be in Form A enclosed to this Regulation.*
>
> *6.3. The Forum, if necessary, may call for any other additional information/documents from the complainant and or licensee so as to enable early disposal of the complaint.*
>
> *6.4. The Forum can pass such interim orders, pending final disposal of the case, as may appear to it to be necessary and just in the interest of justice.*
>
> *6.5. Subject to the foregoing provisions and the need to observe the rules of natural justice the Forum may specify its own procedures.*
>
> *7. Procedure on admission of complaint*
>
> *7.1. A copy of the complaint shall be forwarded by the Forum to the licensee within three working days so as to facilitate for the response of the licensee to the grievance.*

7.2. The Licensee shall furnish para-wise comments on the grievance within fifteen (15) days of intimation from the Forum, failing which the Forum shall proceed on the basis of the material available on record.

7.3. The Forum shall notify in writing the parties of the date of hearing of the grievance, giving sufficient advance notice.

7.4. Upon admission of the complaint, the Forum shall cause a notice of hearing after the registration of the complaint, and pass orders within a maximum period of SIXTY days from the date of admission.

7.5. If the event of default in appearance of the parties the Forum shall pass an order on the basis of the material available on record.

7.6. The Forum shall be entitled to call for any information, call for any particulars or take evidence either oral or documentary from the Licensee of the Consumer.

7.7. The decision of the forum shall be recorded in writing and communicated to the complainant and the licensee for compliance.

8. Proceedings of the Forum

8.1. The Proceedings of the Forum shall be conducted in public.

8.2. The Proceeding of the Forum shall be conducted by the Chairperson of the Forum in the presence of the members, the Quorum being Two. In the absence of the Chairperson for any reason the member representing the Licensee shall preside over the Forum.

> *8.3. Every order made by the Forum shall be signed by its Chairperson and the Members conducting the proceeding. Provided that in case of difference of opinion among the members on any point or points, the decision of the majority shall prevail."*

The Regulation 6 speaks about the procedure in receiving the complaint by the Forum. As per Regulation 7.4, the Forum, upon admission of the Complaint shall register the same. As per Regulation 8.2, the proceeding of the Forum on the registered complaint shall be conducted by the Chairperson of the Forum in the presence of the Members, the Quorum being two. As per Regulation 8.3 every order made by the Forum shall be signed by its Chairperson and the Members conducting the proceeding.

44) On perusal of the impugned order (as per the document in Serial No. 19 filed by the Appellant) as stated supra it appears that, the 2nd Respondent/CGRF has not registered the complaint of the Complainant and no case number is allotted. Again, in the impugned order it appears that only the Chairperson of the CGRF has affixed his signature and copies of the same were forwarded to the Members by name Sri S.R. Manjappa & Sri R. Manjunatha. This impugned order do not say whether the Forum has followed the provisions laid down under Regulation 8.2 of the KERC (CGRF

& Ombudsman) Regulations, 2004, while conducting the proceedings. Hence prima facia this order suffers with material irregularities. However, this Authority acting under Regulation 22.1(b) of KERC (CGRF & Ombudsman) Regulations, 2004, has taken up this complaint for final adjudication in order to avoid multiplicity of proceedings and to safe guard the precious time of both the parties. At this stage, it has become necessary to this Authority to reprimand this Respondent No. 2/CGRF for not discharging its duties in accordance with law laid down in KERC (CGRF & Ombudsman) Regulations, 2004. Under these facts and circumstances, the 2nd Respondent/CGRF is directed to follow herein after the procedure laid down in KERC (CGRF & Ombudsman) Regulations, 2004, in its letter and spirit in all the pending and future receiving complaints.

45) Now coming to the admitted facts of the case there is no dispute that the Appellant/Complainant had been installed the installation bearing RR No. DHT-115, Davanagere under HT-2(b)(i) Commercial Tariff with contract demand of 500KVA. From the date of service till date the Complainant/Appellant had been paying monthly electrical charges as per the monthly bills

prepared and served on him by the 1st Respondent. The 1st Respondent had not disconnected electricity supply to the Appellant/Complainant's installation on any occasion.

46) According to the Respondent No. 1 he has prepared bills for the period from 01.08.2017 to 01.05.2018 to the installation of the Appellant/Complainant under the Tariff HT-2(c) instead of HT-2(b)(i) because of the billing system had changed from 3 zone billing parameters to 4 zone billing parameters and software had also changed. This came to the knowledge of the 1st Respondent only in the month of August 2020 when Internal Audit Staff had audited the bills. Soon after observation the 1st Respondent has served a notice to the Appellant/Complainant dated 12.10.2020 and thereby demanded for payment of difference of amount of Rs. 17,84,422/-. The very contention of the Appellant/ Complainant is that he had been making payment of electricity charges to his installation as per monthly bills issued by the 1st Respondent and the tariff column in all the bills was shown as HT-2(b), thereby, the Appellant/Complainant was under bonafide impression he had making payments as per the demand made by the 1st Respondent for consumption of electricity charges to his

installation every month. The contention of the Appellant/ Complainant cannot be discarded, because a common layman cannot decide of his own whether the way of billing made by the Licensee Company is in accordance with the relevant Tariff Order or not. It is true that the Complainant/Appellant is a prompt Consumer who has been making payment of monthly electricity charges from the date of installation even till today which is not disputed by the 2nd Respondent/CGRF.

47) Now, this Authority has to verify whether the monthly electricity bills for a period from 01.08.2017 to 01.05.2018 have been billed under the tariff HT-2(c) as claimed by the 1st Respondent. In this regard, I would like to refer the relevant portions of Tariff Order for the year 2017 which reads as follows: -

TARIFF SCHEDULE HT-2(b)

Applicable to Commercial Complexes, Cinemas, Hotels, Boarding & Lodging, Amusement Parks, Telephone Exchanges, Race Course, All Clubs, T.V. Stations, All India Radio, Railway Stations, Air Port, BMTC, KSRTC bus stations, All offices, Banks, Commercial Multi-storied buildings, APMC Yards, Stadiums other than those maintained by Government and Local Bodies, Construction power for irrigation, Power Projects and Konkan Railway Project, Petrol/Diesel and Oil storage plants, I.T. based medical transcription centres, telecom, call

centres / BPO / KPO. ***Diagnostic centres, concrete mixture (Ready Mix Concrete) Units.***

RATE SCHEDULE

HT-2(b)(i): Applicable to Areas under Bruhat Bangalore Mahanagara Palike (BBMP) and Municipal Corporations.

Demand Charges	*Rs. 230/kVA of billing demand/month*
Energy Charges	
(i) For the first two lakh units	*845 paise per unit*
(ii) For the balance units	*855 paise per unit*

TARIFF SCHEDULE HT-2(c)

RATE SCHEDULE

HT-2 (c) (i) – Applicable to Government Hospitals, Hospitals run by Charitable Institutions, ESI hospitals, Universities and Educational Institutions belonging to Government and Local bodies, Aided Educational Institutions and Hostels of all Educational Institutions.

Demand Charges	*Rs. 200/kVA of billing demand/month*
Energy Charges	
(i) For the first one lakh units	*640 paise per unit*
(ii) For the balance units	*680 paise per unit*

TOD Tariff applicable to HT 2(a), HT2 (b) and HT2 (c) category.

Time of Day	*Increase (+) / reduction (-) in energy charges over the normal tariff applicable*
06.00 Hrs to 10.00 Hrs	*(+) 100 paise per unit*
10.00 Hrs to 18.00 Hrs	*0*
18.00 Hrs to 22.00 Hrs	*(+) 100 paise per unit*
22.00 Hrs to 06.00 Hrs next day	*(-) 100 paise per unit*

Looking into Tariff Order narrated supra and also the contents of the bills dated 01.08.2017 to 01.05.2018, it appears that the installation of the Appellant/Complainant though comes under Tariff HT-2(b)(i), the Respondent No. 1 has wrongly billed the electricity consumption consumed by the Appellant/Complainant at lower tariff which comes under HT-2(c). Hence Point No. 1 is answered in Affirmative.

48) Then coming to the 2nd question i.e., whether the demand notice issued by the 1st Respondent dated 12.10.2020 is within the period of limitation, the Learned Counsel for the Appellant/ Complainant during the course of arguments, has submitted that the claim made by the 1st Respondent is barred by the principles of limitation which comes under Section 56(2) of Electricity Act, 2003 and Clause 29.08 of Conditions of Supply of Electricity of Distributions Licensees in the State of Karnataka. Because for the sake of arguments, if it is taken that the 1st Respondent had committed mistake in the bills dated from 01.08.2017 to 01.05.2018, in billing the electricity consumption consumed by the Petitioner under HT-2(c) tariff, the 1st Respondent or his staff concerned might have got the knowledge of this mistake while

preparing monthly electricity bill dated 01.06.2018. But, from 01.06.2018 till issuance of preliminary supplementary demand notice no single whisper raised by the 1st Respondent in this regard. Hence, according to the provision laid down under Section 56(2) of Electricity Act, 2003, the right of the 1st Respondent is extinguished, the said provision puts bar to the claim of the 1st Respondent.

49) Further he argued according to Section 56(2) of Electricity Act, 2003, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

50) In the present case on hand, the Respondent No. 1 has not shown the arrears demanded in any of the monthly electricity bills since 01.06.2018 till date. Further, according to this provision the date when alleged mistake had been rectified by the 1st Respondent that becomes his knowledge and the same date becomes “first due date”. Accordingly, on 01.06.2018 the Respondent No. 1

came to know about the mistake committed by him, hence, that date becomes the "date of first due". Calculating from this date the period of 2 years comes to an end on 31.05.2020. But the 1st Respondent has issued preliminary demand notice on 12.10.2020 for the first time claiming short claim of Rs. 17,84,422/- from the Appellant/Complainant i.e., with a delay of 5 months which is barred by limitation, hence, the Appellant/Complainant is not liable to make any payment to the 1st Respondent as per demand letter dated 12.10.2020.

51) By way of reply the Learned Counsel for Respondent No. 1 has submitted that as per settled principles of law by the Hon'ble Supreme Court as well as Hon'ble APTEL, it is held that the term 'first due' would mean the date on which a bill is issued and once it is held that the period of limitation would commence from the date of discovery of the mistake. In the present case on hand, it had not been noticed by the 1st Respondent Office about the erroneous bill till the Audit Staff audited the Appellant/ Complainant's bills till the month of August 2020. When the Audit Staff had brought to the notice of the Respondent No. 1 about the wrong billing calculation, then the Respondent No. 1 issued a

letter to the Appellant/Complainant on 12.10.2020 vide letter No. 6282-84 to pay the difference amount of Rs. 17,84,422/-. Hence, the demand made by the 1st Respondent is within the period of 2 years as per Section 56(2) of the Electricity Act, 2003, as well as Clause 29.08 of Conditions of Supply of Electricity of Distributions Licensees in the State of Karnataka.

52) Clause 29.08 of Conditions of Supply of Electricity of Distributions Licensees in the State of Karnataka which reads as follows: -

> *29.08 ADJUSTMENT OF ERRONEOUS BILLS*
> *a) At any time during verification of the Consumer's account, if any short claims caused by erroneous billing are noticed, the Consumer is liable to pay off difference. The Licensee shall follow the procedure laid down under Clause 29.03 in such cases for preferring the supplemental claims. However, the Licensee shall not recover any arrears after a period of 2 years from the date when such sum became first due, unless such sum has been shown continuously in the bill as recoverable as arrears of the charges of electricity supplied.*
>
> *In case the verification of the Consumer's account shown excess claims made in the past, the excess amount shall be credited to the Consumer's account along with the interest at Bank Rate from the date of payment up to the date of credit. This shall be done within one month from the date of pointing out the excess claims. If for any reason there is delay in crediting the amount*

> *to the Consumer's account, Interest at 2% per month shall be paid to the Consumer for the period beyond two months.*
>
> *b) When the difference is payable by the Consumer, claims shall be made by a separate supplemental bill furnishing all the relevant details with a 15 days' notice as indicated in Clause 29.03.*

As per above provision at any time during verification of the consumer's account, if any short claims caused by erroneous billing are noticed by the Licensee, the consumer is liable to pay the difference. The Licensee shall follow the provisions laid down under Clause 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka in preferring the supplemental claims. Here in the present case, the Licensee had come to know about the mistake committed by his Revenue staff after conducting Internal Audit during the month of August 2020, soon after he has issued notice on 12.10.2020 (Serial No. 6 in the list of documents produced by the Appellant) which is within the period of 2 years. As per Clause 29.03 the Licensee has served a provisional assessment order with 15 days notice to the consumer to file his objections if any. After considering the objections filed by the Appellant/Complainant dated 05.01.2021

(Serial No. 14 in the list of documents produced by the Appellant), the 1st Respondent has issued final order dated 09.02.2021 (Serial No. 12 in the list of documents produced by the Appellant).

53) In this regard, both Learned Counsel for both the parties have relied upon the decisions of Hon'ble Supreme Court of India which are cited supra i.e., (i) M/s Prem Cottex Vs Uttar Haryana Bijli Vitran Nigal Ltd & Others and (ii) Assistant Engineer (D1), Ajmer Vidyuth Vitharan Nigam Ltd & Another Vs Rehamatullah Khan alias Rahamjualla.

53) I have gone through the decision reported in Civil Appeal No. 1672/2020 held between Assistant Engineer (D1), Ajmer Vidyuth Vitharan Nigam Ltd & Another Vs Rehamatullah Khan alias Rahamjualla SC in which the Hon'ble Supreme Court has held as: -

> *6.2 The present Civil Appeal pertains to the interpretation of Section 56 of the Act which reads as follows: -*
>
> *"Section 56. Disconnection of supply in default of payment –*
>
> *(1) Where any person neglects to pay any charge for electricity or any sum other than a charge of electricity due*

from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

a) An amount equal to the sum claimed from him, or
b) The electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,
Whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any

consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

Section 56 provides for disconnection of supply in the case of default in payment of electricity charges. Sub-section (1) of Section 56 provides that where any person "neglects" to pay "any charge" for electricity, or "any sum" other than a charge for electricity due from him to a licensee or generating company, the licensee after giving 15 days' written notice, may disconnect the supply of electricity, until such charges or other sums due, including the expenses incurred, are paid. However, the disconnection cannot continue after the amounts are paid.

6.3 The obligation of a consumer to pay electricity charges arises after the bill is issued by the licensee company. The bill sets out the time within which the charges are to be paid. If the consumer fails to pay the charges within the stipulated period, they get carried forward to the next bill as arrears.

6.4 The proviso to Section 56(1) carves out an exception by providing that the disconnection will not be effected if the consumer either deposits the amount "under protest", or deposits the average charges paid during the preceding six months.

6.5 Sub-section (2) of Section 56 by a non obstante clause provides that notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, shall be recoverable under Section 56, after the expiry of two years from the date when the sum became "first due", unless such sum was shown continuously recoverable as arrears of charges for the electricity supplied, nor would the licensee company disconnect the electricity supply of the consumer.

The effect of a non obstante clause was explained by this Court in Chandravarkar Sita Ratna Rao v. Ashalata S. Guram.[3] *It was held that: -*

> *"69. A clause beginning with the expression 'notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract' is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non-obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause would not be an impediment for an operation of the enactment."*

6.6. The liability to pay arises on the consumption of electricity. The obligation to pay would arise when the bill is issued by the licensee company, quantifying the charges to be paid.

Electricity charges would become "first due" only after the bill is issued to the consumer, even though the liability to pay may arise on the consumption of electricity.

7. The next issue is as to whether the period of limitation of two years provided by Section 56(2) of the Act, would be applicable to an additional or supplementary demand.
7.1 Prior to the coming into force of the Electricity Act, 2003, the Indian Electricity Act, 1910 governed the law pertaining to the use and supply of electricity in India. Section 24 of the Indian Electricity Act, 1910 read as follows: -

> *"24. Discontinuance of supply to consumer neglecting to pay charge.*
>
> *(1) Where any person neglects to pay any charge for energy or any sum, other than a charge for energy, due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charger or other sum,*

together with ally expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer.

(2) Where any difference or dispute which by or under this Act is required to be determined by an Electrical Inspector, has been referred to the Inspector before notice as aforesaid has been given by the licensee, the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision:

Provided that the prohibition contained in this subsection shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the Electrical Inspector of the amount of the licensee's charges or other sums in dispute or for the deposit of the licensee's further charges for energy as they accrue, and the consumer has failed to comply with such request."

7.4 The period of limitation of two years would commence from the date on which the electricity charges became "first due" under sub-section (2) of Section 56. This provision restricts the right of the licensee company to disconnect electricity supply due to non-payment of dues by the consumer, unless such sum has been shown continuously to be recoverable as arrears of electricity supplied, in the bills raised for the past period.

If the licensee company were to be allowed to disconnect electricity supply that the expiry of the limitation period of two

years after the sum became "first due", it would defeat the object of Section 56(2).

8. Section 56(2) however, does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years. It only restricts the right of the licensee to disconnect electricity supply due to non-payment of dues after the period of limitation of two years has expired, nor does it restrict other modes of recovery which may be initiated by the licensee company for recovery of a supplementary demand.

9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2001.

The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.

Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.

As per Section 17(1)(c) of the Limitation Act, 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time.

In Mahabir Kishore and Ors.v.State of Madhya Pradesh,[5] this Court held that :-

> *"Section 17(1)(c) of the Limitation Act, 1963, provides that in the case of a suit for relief on the ground of mistake, the period of limitation does not begin to run until the plaintiff had discovered the mistake or could with reasonable diligence, have discovered it. In a case where payment has been made under a mistake of law as contrasted with a mistake of fact, generally the mistake become known to the party only when a court makes a declaration as to the invalidity of the law. Though a party could, with reasonable diligence, discover a mistake of fact even before a court makes a pronouncement, it is seldom that a person can, even with reasonable diligence, discover a mistake of law before a judgement adjudging the validity of the law."*

In the present case, the period of limitation would commence from the date of discovery of the mistake i.e., 18.03.2014. The licensee company may take recourse to any remedy available in law for recovery of the additional demand, but is barred from taking recourse to disconnection of supply of electricity under sub-section (2) of Section 56 of the Act.

54) I have gone through another decision rendered by Hon'ble Supreme Court in Civil Appeal No. 7235 of 2009, dated

05.10.2021 in M/s Prem Cottex Vs Uttar Haryana Bijli Vitran Nigal Ltd & Others, in which it is held as follows: -

> *11. In Rahamatullah Khan (supra), three issues arose for the consideration of this Court. They were (i) what if the meaning to be ascribed to the term "first due" in Section 56(2) of the Act; (ii) in the case of a wrong billing tariff having been applied on account of a mistake, when would the amount become first due; and (iii) whether recourse to disconnection may be taken by the licensee after the lapse of two years in the case of a mistake.*
>
> *12. On the first two issues, this Court held that* **though the liability to pay arises on the consumption of electricity, the obligation to pay would arise only when the bill is raised by the licensee** *and that, therefore,* **electricity charges would become "first due" only after the bill is issued, even though the liability would have arisen on consumption.** *On the third issue, this Court held in* **Rahamatullah Khan** *(supra), that "the period of limitation of two years would commence from the date on which the electricity charges became first due under Section 56(2)". This Court also held that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation in the case of a mistake or bonafide error. To come to such a conclusion, this Court also referred to Section 17(1)(c) of the Limitation Act, 1963 and the decision of this Court in* **Mahabir Kishore & Ors. Vs. State of Madhya Pradesh**[2.]

13. Despite holding that electricity charges would become first due only after the bill is issued to the consumer (para 6.9 of the SCC Report) and despite holding that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation prescribed therein in the case of a mistake or bonafide error (Para 9.1 of the SCC Report), this Court came to the conclusion that what is barred under Section 56(2) is only the disconnection of supply of electricity. In other words, it was held by this Court in the penultimate paragraph that the licensee may take recourse to any remedy available in law for the recovery of the additional demand, but is barred from taking recourse to disconnection of supply under Section 56(2).

16. Be that as it may, once it is held that the term "first due" would mean the date on which a bill is issued, (as held in para 6.9 of ***Rahamatullah Khan)*** *and once it is held that the period of limitation would commence from the date of discovery of the mistake (as held in paragraphs 9.1 to 9.3* ***of Rahamatullah Khan),*** *then the question of allowing licensee to recover the amount by any other mode but not take recourse to disconnection of supply would not arise. But* ***Rahamatullah Khan*** *says in the penultimate paragraph that "the licensee may take recourse to any remedy available in law for recovery of the additional demand, but barred from taking recourse to disconnection of supply under sub-section (2) of section 56 of the Act".*

> *25. In other words, the negligence on the part of the licensee which led to short billing in the first instance and the rectification of the same after the mistake is detected, is not covered by Sub-section (1) of Section 56. Consequently, any claim so made by a licensee after the detection of their mistake, may not fall within the mischief, namely, "no sum due from any consumer under this Section", appearing in Sub-section (2).*

The Hon'ble Apex Court has held that as, the Consumer in that case was billed under a particular tariff code for the period from July 2009 to September 2011, but after audit, it was discovered that a difference Tariff code should have been applied therefore, a show cause notice was issued on 18.03.2014 raising an additional demand for the period from July 2009 to September 2011. Then a bill was raised on 25.05.2015 for the said aforesaid period. The Consumer challenged the demand before the District Consumer Forum but the order of the District Forum was reversed by the State Commission on an appeal by Licensee. The National Commission on a revision filed by the Consumer set aside the order of State Commission and restored the order of the District Forum. Further held this Court disposed of appeal preventing the Licensee from taking recourse to disconnection of supply but giving them liberty to take course to any remedy

available in law for recovery of the additional demand. Finally, the Hon'ble Supreme Court held that if a Licensee discovers in the course of audit or otherwise that a Consumer has been short billed, the Licensee is certainly entitled to raise a demand and allowed the prayer of the Licensee and granted 8 weeks time to the Appellant therein to make payment of the balance amount.

54) I have gone through the orders passed by the Hon'ble High Court of Karnataka in (i) Writ Petition No. 17225/2007 (GM-KEB) held between BESCOM Vs M/s Ghousia College of Engineering, Ramanagara and Another, dated 05.11.2008 and (ii) the orders passed by the Hon'ble High Court of Karnataka in WP No. 65865/2011 (GM-RES) held between AEE (Ele), Hubli Vs Electricity Ombudsman & 2 Others, dated 03.09.2022. In the recent orders the Hon'ble High Court of Karnataka has relied upon the judgement passed by the Hon'ble Apex Court in the case of M/s Prem Cottex Vs Uttara Haryana Bijili Vitaran Nigam Limited & Others and made observation as here under: -

> *11. In the present case, the 3rd Respondent has already deposited the amount made in the demand notice without any protest. Hence, when the Petitioner has not reserved his right at the time of depositing the short claim the 3rd Respondent has no right to*

> *challenge the same. The 1st Respondent without considering the said aspect has proceeded to pass the impugned order. The order passed by the 1st Respondent is contrary to the law laid down by the Hon'ble Apex Court in the case of M/s Prem Cottex (supra).*

Finally passed orders allowing the Writ Petition filed by the AEE (Ele) therein, consequently, dismissed the appeal filed by the 3rd Respondent/the Consumer therein.

55) In the present case on hand the Appellant/Complainant is running Lakshmi Floor Mill at Davanagere. He got electricity connection from the 1st Respondent under HT-2(b)(i) Commercial Tariff with contract demand 500KVA. The 1st Respondent serviced power supply to the DHT-115 on 02.01.2017. After 3 years of grant of service the Appellant/Complainant was served with a notice dated 12.10.2020 by the 1st Respondent/AEE (Ele) claiming the difference amount of Rs. 17,84,422/- on the ground that the electrical bills for a period from 01.08.2017 to 01.05.2018 were billed under HT-2(c) tariff instead of HT-2(b)(i) tariff, and this mistake is a clerical mistake/by oversight committed by the concerned Office Staff of the 1st Respondent. Thereafter, after following the Clause 29.03 of Conditions of Supply of Electricity of

Distribution Licensees in the State of Karnataka, he has issued final demand bills dated 09.02.2021. The contention taken by the 1st Respondent/AEE(Ele) that due to change of computerization in Manual Excel Software from 3 zone billing parameters to 4 zone billing parameters, some clerical mistakes had happened by the staff of the 1st Respondent which came to the notice of the 1st Respondent during the month of August 2020 at the time of conducting Internal Audit. The then AEE(Ele) got transferred on 02.05.2019 and new AEE(Ele) had taken charge of the post. All these contentions though denied by the Appellant/Complainant, but these contentions cannot be brushed aside as per the findings given by the Hon'ble Supreme Court as well as Hon'ble High Court of Karnataka. Under these facts and circumstances of the case, the due date would commence from the date of discovery of mistake i.e., somewhere in the month of August 2020. The Learned Counsel for the 1st Respondent may take recourse to any remedy available in law for recovery of the additional demand but is barred from taking recourse to disconnection of supply of electricity. Hence, as per principles laid down by the Hon'ble Apex Court and the Hon'ble High Court of

Karnataka, the 1st Respondent is at liberty to recover short claim from the Appellant/Complainant. The Learned Counsel for Appellant/Complainant has relied upon other decisions which are narrated supra in serial No. 4 to 6 at para 33 and submitted the Appellant/Complainant is not liable to pay any short claim amount to the 1st Respondent, because the claim made by the 1st Respondent is beyond period of limitation of 2 years under Section 56(2) of Electricity Act. This contention of the Learned Counsel for the Appellant/Complainant cannot be accepted because, the law declared by the Hon'ble Supreme Court shall be binding on all the Courts within jurisdiction of India. When a judgement has been delivered by the Hon'ble Supreme Court it is the obligation of all citizens to act in aid thereof and to obey the directions contained therein.

56) As per contention of the 1st Respondent on every 1st day of the month AEE (Ele) concerned usually takes the readings of the HT installations manually and enters in the reading book. The reading book will be forwarded to the concerned Case Worker or Accounts Officer to prepare final bills and such bills will be issued to the concerned Consumers. In the present case on hand due to

computer mistake or by oversight the bills of the Appellant/Complainant for the alleged period were prepared erroneously. Though this mistake or error may not be malafide on their part but can be termed as negligence on the part of the 1st Respondent and his concerned Revenue staff while calculating the impugned electricity bill charges. Because of the carelessness or negligence of the 1st Respondent and his staff concerned the Consumer cannot be put into sufferings. This attitude of the 1st Respondent and the staff concerned shows that they have committed dereliction in discharging their regular duties. Thereby, they have caused huge loss to the Company and also put the Appellant/Complainant in to mental agony. Hence, I would like to refer this matter to the MD, BESCOM to find out who are the Officers or Officials are responsible in causing loss to the Company and to take up required action in accordance with law or rules and to recover the loss caused if any to the Company from those responsible Officers or Officials and reprimand them to be alert in future.

57) As discussed above at the cost of repetition, I would like to say that as per findings given by (i) the Hon'ble Apex Court in M/s

Prem Cottex Vs Uttar Haryana Bijli Vitran Nigal Ltd & Others and (ii) Assistant Engineer (D1), Ajmer Vidyuth Vitharan Nigam Ltd & Another Vs Rehamatullah Khan alias Rahamjualla (iii) the orders passed by Hon'ble High Court of Karnataka in Writ Petition No. 65865/2001 (GM-RES) held between AEE (Ele), Hubli Vs The Electricity Ombudsman & Others. The Section 56(2) of Electricity Act 2003 did not preclude the Licensee Company from raising additional or supplemental demand after the expiry of limitation period as per Section 56(2) in the case of a mistake or error committed bonofidely. Hence, the Appellant/Complainant has to make payment of the difference amount of Rs. 17,84,422/- to the 1st Respondent.

58) During the course of arguments, the Appellant/Complainant has submitted that the short claim amount demanded by the 1st Respondent is a huge amount and the Appellant/Complainant cannot make payment in lumpsum. Considering the submission of the Learned Counsel for the Appellant/Complainant, if a liberty is given to him to make payments of supplementary claim in 3 monthly equal installments to the 1st Respondent/AEE (Ele) may meet his difficulty. With this I answer, Point No. 2 in Affirmative.

55) **Point No. 3 & 4: -** As per the discussions made herein above in Point No. 1 & 2, the Appellant/Complainant is not entitled for the relief as sought by him in the Appeal/Complaint, hence, it has to be dismissed. With this, I proceed to pass the following order: -

O R D E R

No. OMB/B/G-492/2022/D-155 Dated: 29-11-2022

The Appeal/Complaint filed by the Appellant/Complainant is hereby dismissed.

The Appellant/Complainant shall pay short claim of Rs. 17,84,422/- to the office of the 1st Respondent within 3 months from the date of this order. However, he was given a liberty to make this payment in 3 monthly equal installments starting from 30.01.2023.

In case of default of the Appellant/ Complainant in making payments as stated above, the 1st Respondent is at liberty to take up action for recovery of that amount in accordance with law.

The office is directed to send a certified copy of this order to CGRF/2nd Respondent to follow the guidelines as narrated in Para 43 & 44.

The office shall send a certified copy of the order to MD, BESCOM to take proper steps as

narrated in Para 57 and report to this office at earliest.

The office is directed to comply the provisions laid down in Regulation 22.7 of KERC (Consumer Grievance Redressal Forum & Ombudsman), Regulations 2004.

Sd/-
(R. Sharada)
Electricity Ombudsman.

1. Sri S.S. Ganesh,
   S/o Dr. Shamanur Shivashakrappa,
   Partner of Lakshmi Floor Mill,
   #3993/23, S.S Badavane, 'A' Block,
   Davanagere - 577004.
2. Sri S. Umapathy, Advocate,
   #3700, M.C.C.A Block,
   Davanagere - 577004.
3. The Assistant Executive Engineer (Elec.),
   O & M City Sub-division-1, BESCOM,
   Davanagere - 577002.
4. Sri. M. Umesh,
   Advocate,
   Chitradurga – 577501.
5. The Chairperson, Consumer Grievance Redressal Forum/(CGRF),
   Davanagere Circle Office, BESCOM,
   Hadadi Road,
   Davanagere – 577002.
6. PS to Hon'ble Chairman, KERC
7. PS to Hon'ble Member (M), KERC
8. PS to Hon'ble Member (R), KERC
9. PA to Secretary, KERC.