

No. N/16/2020

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,

No.16, C-1, Millers Tank Bed Area, Vasanth Nagar, Bengaluru-560 052.

Dated: 16.02.2021

Present

Shri Shambhy Dayal Meena : Chairman
Shri H.M. Manjunatha : Member
Shri M.D. Ravi : Member

Complaint No.01/2020

BETWEEN:

M/s. Eureka Forbes Limited
Formerly known as Ms. Aquamall
Water Solutions Limited
Office at:
No. 143 C-4, Bommasandra Industrial Area,
Bengaluru-560 099.
[Represented by Shri Prashanth S. Shivadass, Advocate]

**...Petitioner/
Complainant**

AND:

- 1) Bangalore Electricity Supply Company
Cauvery Bhavan, K.G. Road,
Bengaluru-560 009. **...Respondent No.1**
- 2) Assistant Executive Engineer (Ele.),
Chandrapura Sub-Division,
Chandrapura, Bengaluru. **...Respondent No.2**
- 3) Assistant Engineer O & M,
BESCOM, Chandrapura Sub-Division,
Bengaluru-560 099. **...Respondent No.3**
- 4) Executive Engineer O & M,
BESCOM, Chandrapura Sub-Division,
Bengaluru-560 099. **...Respondent No.4**

ORDERS

1. The Complainant M/s. Eureka Forbs Limited filed this complaint under Section 146 read with 142 of the Electricity Act 2003, for non-compliance of the Interim orders dated 13.06.2019 and 18.10.2019 passed by the Consumer Grievance Redressal Forum (CGRF), praying for the following

Main reliefs to:

- (a) Pass an order initiating appropriate action against Respondent No. 2 under Section 146 of the Electricity Act 2003 for wilfully disobeying the order of the Commission;
 - (b) Pass an order initiating appropriate action against Respondent No. 1 for not discharging its statutory functions, in directing Respondent-2 to execute the Interim Order dated June 13, 2019;
 - (c) Pass an order, imposing maximum penalty under Section 14 and 146 of the Electricity Act, 2003 against the Respondent Nos. 1 & 2 and their erring officials;
 - (d) Pass an order securing compliance of the Interim Order dated June 13, 2019 in CGRF No. 42/16-17, by directing Respondent 2 to refund the excess security deposit amount of Rs.47,56,840/-;
 - (e) Pass an order, directing the Respondent No. 2 to pay interest @ 18% per annum to the Complainant on the aforesaid sum of Rs. 47,56,840/-;
 - (f) Pass such other order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.
2. The relevant facts of the case required for the purpose of disposing the controversy involved in this case may be stated as follows:
3. The Complainant is a public limited company established its industry in Bommasandra Industrial area on Hosur Road and the installation bearing RR No. AKLHT 104 was serviced by the Respondent No. 1 with an initial

contract demand of 500 KVA. The Complainant entered into a lease agreement with M/s Shell India Private Limited for a portion of composite premises with shared a common meter connection, later additional power of contract demand of 750 KVA was added to the existing power connection. In the month of March 2016 Lessee M/s. Shell India Private Limited availed a separate power connection with a separate meter from the Respondent No. 1. Accordingly, the Complainant sought for reduction in the contract demand from 1250 KVA to 100 KVA on 02.03.2016 and sought for refund of security deposit. However, the Respondents rejected the application of the Complainant. The Complainant filed second application seeking the same prayer which was also came to be rejected. Questioning the legality of the rejection of the application for reduction of the contract demand and refund of security deposit, the Complainant filed a complaint before the CGRF Bengaluru Urban (herein after called as CGRF). On 13.06.2019 CGRF passed an order directing the Respondent refund the excess deposit amount of Rs. 47,56,840 due to the reduction of load from 1250 KVA to 100 KVA as per the Regulation 34.04 of Condition of Supply of Electricity of Distribution Licensee in the State of Karnataka (CoS) within 2 weeks from the date of the passing of the order. During the pendency of the complaint before CGRF, the Respondent No. 2 approved for reduction of the contract demand to 100 KVA by its order dated 23.09.2017, however the approval for reduction of contract demand was from January 2018 only. In spite of the sufficient letter correspondence made with the Respondent No. 2 for refund of excess

security deposit, the Respondent No.2 failed to refund excess security deposit which was brought to the notice of the CGRF, stating that the Respondent No.1 wilfully not complying the orders of the CGRF. The Complainant once again approached the CGRF by filing its written submission praying to initiate proceedings against the Respondents and thereafter, the CGRF on 18.10.2019 passed an order stating that it is a fit case for invoking Section 146 of the Electricity Act, 2003 and recommended to the KERC to punish the Respondents for non-compliance of the order passed by the CGRF. Since the Respondent No.2 did not comply with the order of the CGRF dated 18.10.2019, the Complainant filed the present complaint seeking appropriate action against Respondents and consequential reliefs of compliance of interim order dated 13.06.2019 passed by the CGRF.

4. The case was called for hearing on maintainability on 10.12.2020 through video conferencing, and posted for further hearing on maintainability of the complaint. On 28.01.2021, the learned counsel Sri Prashant Shivadas, appearing for the Complainant addressed oral submissions on maintainability of the complaint.
5. On perusal of the complaint and the documents produced by the Complainant, the Commission observed that it is not in dispute that the Complainant in his complaint sought for initiating appropriate action against the Respondent No.1 and 2 for wilful disobedience of the orders passed by the CGRF and securing the compliance of the interim orders and for imposing maximum penalty. The Complainant through this

complaint seeking enforcement of the orders passed by the CGRF dated 13.06.2019 and 18.10.2019 respectively.

6. On the above contentions, the point that arise for the consideration of this commission is:
 - a) Whether the complaint filed under Section 142 of Electricity Act 2003 is maintainable without exhausting the remedy available under KERC (CGRF & Ombudsman) Regulations 2004?
 - b) Whether the complaint in the present form is maintainable?
7. Our answer to the above points are in the:
 - a) Negative.
 - b) Negative.

for the following.

8. While considering the question of maintainability of complaint, it is useful to refer the relevant Regulations of the KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2004, which reads as under:

Regulation No. 20. Powers and Duties of the Ombudsman

The Ombudsman shall have the following powers and duties:

- (1) to receive the representations against the order of the Forum and consider such representation and facilitate their satisfaction or settlement by agreement through conciliation and mediation between the licensee and Complainant or by passing an award in accordance with these Regulations.***

Regulation No. 21. Procedure for Redressal of Grievance

21.2. Any Complainant, who is aggrieved by the non-redressal of his grievances by the forum may himself or through his representative make a representation to the Ombudsman exercising jurisdiction over the licensee within Thirty (30) days from the date of the receipt of the order of the Forum. Provided that the Ombudsman may entertain a representation after the expiry of the said period of Thirty (30) days if he is satisfied that there was sufficient cause for not filing it within the said period.

21.03 The complaint shall be in writing duly signed by the Complainant in a form specified in Form B of the Regulation.

Regulation No. 22. Maintainability of the Complaint:

22.1. No representation to the ombudsman shall lie:

(a) unless the Complainant had made a written representation in the prescribed form, to the Forum

(b) unless the Complaint is aggrieved on account of his complaint being not redressed by the Forum within the period and manner specified in these Regulations

(c) unless the representation against an order of the Forum was made within the period specified in these Regulations and is not in respect of the same subject matter that has been settled by the Ombudsman in any previous proceedings

(d) in cases where a representation for the same grievance by the Complainant is pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority.??

9. On plain reading of the above said regulations makes it clear that being aggrieved by the orders passed by the CGRF, the Complainant has to prefer a representation in the form of appeal to the Ombudsman. The other regulations referred supra deals with procedure for redressal of

grievance and disposal of the representation/appeal submitted by the Complainant. In this case, the Complainant instead of submitting a representation before the Ombudsman, filed a complaint before the Commission, which is not maintainable. If the Complainant is aggrieved by the orders passed by the CGRF, he has to present a representation in the form of an appeal before the Ombudsman who is the Appellate Authority. When the regulations referred supra provides a quick, inexpensive, effective and alternative efficacious remedy, the Complainant has to avail such a remedy contemplated under the KERC (CGRF & Ombudsman) Regulations 2004. When alternative efficacious remedy is available to the Complainant in the above said regulations, the complaint filed by the Complainant is liable to be dismissed as not maintainable. Accordingly, point No. 1 and 2 are answered in the negative. It is made clear that this order will not come in the way of the Complainant approaching the Ombudsman, if so desired.

10. In the result, we proceed to pass the following:

ORDER

The complaint is not maintainable before this Commission. Accordingly, the complaint is dismissed.

sd/-
(SHAMBHU DAYAL MEENA)
Chairman

sd/-
(H.M. MANJUNATHA)
Member

sd/-
(M.D. RAVI)
Member