

No. N/107/2019

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**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,**

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

**Dated: 29.10.2021**

**Present**

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

**Complaint No.02/2019**

**BETWEEN:**

ICT Services Management  
Solutions India Private Limited,  
A Company Registered under the provisions of the  
Companies Act, 1956, having its  
Registered Office at  
No.30-A, Peenya 2<sup>nd</sup> Phase,  
Peenya Industrial Area, Peenya,  
Bengaluru-560 058.

**... PETITIONER/COMPLAINANT**

(Represented by Ms. Ekta Pradhan, Advocate  
for M/s Veritas Legis, Advocates & Consultants)

**AND:**

1) Bangalore Electricity Supply Company Limited,  
A Company Registered under the provisions of the  
Companies Act, 1956, having its  
Registered Office at K.R. Circle,  
Bengaluru-560 001.  
(Represented by its Managing Director)

2) The Assistant Executive Engineer (Ele),  
No.5, Sub-Division, BESCO, Peenya SRS,  
Bengaluru-560 058.

**... RESPONDENTS**

[Respondents represented by Sri Shahbaaz, Hussain  
Advocate for M/s Precincts Legal)

**ORDERS ON MAINTAINABILITY OF THE PRESENT COMPLAINT**

1. The present proceeding is filed under Section 142 of the Electricity Act, 2003 read with Regulation 18 of the Conditions of Supply by the petitioner/complainant praying for the following reliefs:

- a) Declare that the action of the Respondents in re-categorizing the Petitioner from HT2(a) to HT2(b) is arbitrary, illegal and without authority of law and contrary to the Tariff Order dated 14.05.2018 of this Commission;
- b) Pass an appropriate order against the Respondent for breaching the license conditions issued by this Commission;
- c) Pass an order setting aside the demand notice dated 16.02.2019 and the order dated 18.03.2019 issued by the Respondent No.2; and
- d) Pass such other and incidental order as may deem fit appropriate in the facts and circumstances of the case.

2. In substance, the complainant has challenged the proceedings of the Assistant Executive Engineer, Electrical & Assessing Officer, N-5 Sub-Division, BESCOM dated 18.03.2019 which culminated in his final order No.AEE(EL)/N5/AAO/SA/JA-BBC/175 dated 15.04.2019 (marked at Annexure-P4). The final order reads as follows:

*“Wherefore, I, S.H. Parashuramappa, Assistant Executive Engineer (El) & Assessing Officer, N-5 Sub-Division, for the reason stated above hereby confirms the back bill in respect of R.R. Number: N4 HT 818 issued in No.AEE/N5/AAO/SA/5571-77 dated 21.02.2019 for the period between March 2018 to February 2019 for Rs. 1,12,42,174.00 as payable by the consumer. The back bill shall be continued to be levied for three months. The unauthorised supply shall be disconnected if not regularised within three months from the date of this order.*

*Consumer if he so desires can appeal before the Corporate Appellate Authority by making a deposit of 50% of the back bill amount + 1% towards proceeding fee.*

*For payment of 50% of the back bill + 1% towards processing fee  
Order will be issued by Corporate Appellate Authority.*

*The Consumer shall comply with this order within 30 days from  
this date, failing which the installation shall be disconnected  
without further notice.*

*sd/-*

*Assistant Executive Engineer &  
& Assessing Officer  
N-5, Sub-Division, BESCO, M,  
SRS Peenya, Bangalore."*

3. a) The charges were that the installation bearing RR No.N4 HT 818 with a contract demand of 500 KVA under HT-2(a) Industrial Tariff was standing in the name of M/s ICT Service Management Solutions India Private Limited (Complainant) and that the Assistant Executive Engineer (Ele.), Vigilance, Malleswaram Police Station, BESCO inspected the premises of the Complainant on 01.02.2019 and reported that the premises in question was not being used for production of any material and the same was being used for lap-top spare parts warehouse and a small portion in the first floor was also being used for servicing centre. Therefore, according to the Vigilance there was unauthorised use of electricity within the meaning of Section 126 of the Electricity Act, 2003 and the Complainant was liable for unauthorised use of electricity in the said premises.
- b) Thereafter, the Assistant Executive Engineer (El.) Vigilance, sent report to the Assessing Officer for taking further action. Accordingly, the Assessing Officer issued a provisional Demand Notice dated 21.02.2019 claiming Rs.1,12,42,174 towards back billing charges and informed the

Complainant to pay the same within 30 days from the date of receipt of the said notice or to file objections if any to the back billing within 15 days.

- c) The Complainant filed its objections raising several grounds to contend that there was no unauthorised use of electricity by it and requested to withdraw the Demand Notice.
- d) The Assessing Officer recorded the statement of Vigilance Officer and on consideration of the objections filed by the Complainant came to the conclusion that the Complainant/Consumer availed Power Supply under HT2(a) tariff, but no production was found in the premises and the premises was being used for lap-top spare parts warehouse and for servicing centre in a small portion at one floor which would attract HT2(b) tariff. Therefore, the final assessment order was passed on 15.04.2019 (Annexure-P4) as noted above by the Assessing Officer.

4. Aggrieved by the final Assessment Order dated 15.04.2019 (Annexure-P4), the Complainant has preferred the present complaint. The material grounds urged by the Complainant are that:

- a) As per the Retail Tariff Order dated 14.05.2018 issued by this Commission relating to BESCO, category HT-2(a) is as under:

*“Applicable to Industries, Factories, Workshops, Research & Development Centres, Industrial Estates, Milk dairies, Rice Mills, Poha Mills, Roller Flour Mills, News Papers, Printing Press, Railway Workshops/KSRTC Workshops/Depots, Crematoriums, Cold Storage, Ice & Ice-ream mfg. Units, Swimming Pools of local bodies, Water Supply Installations of KIADB and other*

industries, all Defence Establishments. Hatcheries, Poultry Farm, Museum, Floriculture, Green House, Bio Technical Laboratory, Hybrid Seeds processing Units, Stone Crushers, Stone cutting, Bakery Product Manufacturing Units, Mysore Palace illumination, Film Studios, Dubbing Theatres, Processing, Printing Developing and Recording Theatres, Tissue Culture, Aqua Culture, Prawn Culture, **Information Technology Industries engaged in development of Hardware & Software, Information Technology (IT) enabled Services/Start-ups (As defined in GOI notification dated 17.04.2015)/Animation/ Gaming/Computer Graphics as certified by the IT & BT Department of GOK/GOI.** Drug Mfg. Units. Garment Mfg. Units, Tyre re-treading units, Nuclear Power Projects, Stadiums maintained by Government and local bodies, Railway Traction, Effluent treatment plants and Drainage water treatment plants owned other than by the local bodies, independently serviced outside the premises of industries/Buildings for which the HT power supply is availed. LPG bottling plants, petroleum pipeline projects. Piggery farms, Analytical Lab for analysis of ore metals, Saw Mills, Toy/wood industries, Satellite communication centres, Mineral water processing plants/drinking water bottling plants and Solid Waste Processing Plant.

Rate Schedule

XXXXXXXXXXXXXXXXXX”

The Complainant has further contended that it had obtained Registration Certificate dated 07.07.2010 issued by the Director, Information Technology & Bio-Technology Department of GOK, wherein it was certified that M/s ICT Service Management Solutions (India)

Private Limited (Complainant) was registered as an Electronic Hardware Company (for activity of Service and Assembly of Electronic Hardware Products).

Therefore, the Complainant has contended that it would fall under Category HT-2(a). Further, it is contended that the Assessing Officer could not have gone behind the said Registration Certificate issued by the Director, IT & BT Department, GOK.

- b) It is also contended that the Category HT-2(b) stated in the Retail Tariff Order dated 14.05.2018 is as under:

*“Applicable to Commercial Complexes, Cinemas, Hotels, Boarding & Lodging, Amusement Parks, Telephone Exchanges, Race Course, All Clubs, T.V. Station, All India Radio, Railway Stations, Air Port, BMT, 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 centre/BPO/KPTO, Diagnostic centres, concrete mixture (Ready Mix Concrete) units, Private Guest Houses/Travellers Bungalows.*

Rate Schedule

xxxxxxxxxxxxxxxxxxxxx”

It is contended that the Undertaking of the Complainant cannot be brought under any of the activities stated in Category HT-2(b).

- c) Previously, similar proceedings were taken twice by the concerned officials for back billing and the CGRF had allowed the contentions of the Complainant and the back billings were set aside.

5. The respondents have appeared through counsel and filed objections denying the contentions raised by the Complainant. It is contended that the proceedings conducted by the Assessing Officer being under Section 126 of the Electricity Act, 2003, the aggrieved person against the final order made under that Section has to file appeal within the time prescribed and on fulfilling such other conditions as per Section 127 of the said Electricity Act, 2003. Therefore, it is contended that a Complaint under Section 142 of the Electricity Act, 2003 is misconceived and for avoiding the payment of a portion of assessed amount, the present complaint is filed.
6. In view of the contentions regarding the jurisdiction of this Commission to entertain the complaint raised by the respondents, we have heard the learned counsel for the parties on this issue.
7. On perusal of the Section 126 & 127 and also Section 145 of the Electricity Act, 2003, we are of the considered opinion that the present complaint is not maintainable which is in the guise of challenging the order passed under Section 126 of the Electricity Act, 2003 for the following reasons:
  - a) Sub-Section 1 of Section 127 of the 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) to (6) xxxxxxxxxxxxxxxxx

- b) The above provisions make it very clear that the appeal should be preferred as provided under Section 127 of the Electricity Act, 2003. Such appeal in the nature of any complaint or other petition is not maintainable before this Commission.
- c) The learned counsel for the respondents relied upon the decision cited in (2012) SCC 108 between Southern Electricity Orissa Limited & Another Vs. Sri Seetaram Rice Mill. This decision also specifically notes that the appeal should be preferred before the Appellate Authority as provided in Section 127 against the final order passed under Section 126 of the Electricity Act, 2003, by the Assessing Officer.
- d) During the pendency of the proceeding, the Commission had instructed the Director (Technical), BESCO to file a report regarding the activity being carried out in the premises of the Complainant. Accordingly, a report dated 12.11.2019 was filed with the following conclusion:

*"The main activity being carried out in the premises is that of service/repair centre. Materials required for repair related to repair center are stored. The pre-testing, repairs, testing the products after repairs are being carried out in the premises. Further, amended Registration certificate received from Directorate of Information Technology & Bio-technology also certifies that M/s ICT Services Management Solutions Private Limited is registered as a "Electronic Hardware Company (for the activity of Service and Assembly of Electronic Hardware products) (Copy enclosed).*

sd/-

(Sri G. Ashok Kumar)

Director (Technical), BESCO."

- e) The learned counsel for the Complainant submitted that since the inception the Complainant is carrying on the same nature of 'Electronic



Hardware Company (Services & Assembly of Electronic Hardware Products) as mentioned in the Registration Certificate dated 07.07.2010 and on the basis of it, requested for supply of energy and on verification of the premises of the Complainant, the respondent had granted power sanction under Category HT-2(a). Further he submitted that the Complainant is still continuing the same activity, and in the event the respondent felt that it had wrongly classified the Complainant under HT-2(a) instead of HT-2(b), the proper procedure to be followed was as per Clause 3.04 of 'The Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka' (COS 2006), but not proceeding under Section 126 of the Electricity Act, 2003. Further he pointed out that for attracting Section 126 of the Electricity Act, 2003 & the Assessing Officer proceeding under that Section, it should be shown that there was unauthorised use of electricity as explained in Section 126 of the Act, 2003. According to the learned counsel for the Complainant, had the Complainant changed the nature of its activities subsequent to obtaining power sanction, without the knowledge of the Distribution Licensee and such changed activities attracted higher tariff or altered the purpose other than for which the usage of electricity was authorised. Therefore, he submitted that the provision under clause 3.04 of the COS, 2006 should have been followed by the respondent, assuming that the activities of the Complainant attracted tariff under Category HT-2(b). The Clause 3.04 of the COS, 2006 reads as follows:

"3.04 RECLASSIFICATION OF CONSUMER:

*If it is found that a Consumer has been classified under a particular Tariff category erroneously, the Engineer of the Licensee may reclassify such Consumer under the appropriate category after issuing notice of 15 clear days to him to execute a fresh Agreement duly observing other Conditions, if required, on the basis of the altered classification.*

*If the Consumer does not take steps within the time indicated in the notice to execute the fresh Agreement duly observing the required conditions, the Engineer, may disconnect the supply of power, after issuing a clear fifteen days' notice and after considering his explanation, if any. In case of disconnection of Power Supply, reconnection shall be effected as soon as the fresh agreement is executed."*

- f) Though the argument of the learned counsel for Complainant/Petitioner appears to be well-founded on merit, we need not go into that question, when the Commission has no jurisdiction to decide on that issue. The Complainant was at liberty to urge all such points before the Appellate Authority provided under Section 127 of the Electricity Act, 2003. It is an acceptable principle that a Court or other Quasi-Judicial Authority cannot go into the merits of the case on facts, when it has no inherent jurisdiction to decide the controversy involved.
- g) For the above reasons, we pass the following:

**ORDER**

The complaint is dismissed holding that this Commission has no jurisdiction to go into the controversy involved between parties as noted in the Order.

sd/-  
(SHAMBHU DAYAL MEENA)  
Chairman

sd/-  
(H.M. MANJUNATHA)  
Member

sd/-  
(M.D. RAVI)  
Member