

BEFORE THE ELECTRICITY OMBUDSMAN

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

Present: S.S Pattanashetti,
Electricity Ombudsman,

Case No. OMB/G/G-366/2019

Dated 29/11/2019

In the matter of

Shri A. Srinivasa Rao,
C/o. V.N Tailor, H.No. 132/7,
W.No. 7, Near Anganawadi Centre-1,
Ananthashayanagudi Post,
Hosapete Taluk,
Bellary District. -

Appellant

Vs

1) The Assistant Executive Engineer (Elec),
O & M City Sub-Division-2, GESCOM,
Hosapete,
Bellary District.

2) Chairperson, Consumer Grievance Redressal Forum (CGRF)
Ballari District,
Superintending Engineer (Ele),
O & M Circle, GESCOM,
Satyanarayanapeth, 1st Cross,
Bellary – 583101. -

Respondents

1) This Appeal/Complaint is filed before this Authority, by Shri A. Srinivasa Rao, (Appellant/Complainant), under the provisions of Clause 21.2 of the KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2004, in Form 'B' challenging the order No. CGRF ಅಅ(ವಿ)/ಜೆಸ್ಕಾಂ/ಬಳ್ಳಾರಿ/ಸಿ.ಜಿ.ಆರ್.ಎಫ್/2019-20/2876-

79 dated 08-08-2019 of CGRF, Bellary District, by inter-alia seeking the following reliefs:

To order for repayment of compounding fees paid.

- 2) Brief facts, which are relevant to the case as claimed by the Appellant/Complainant are as follows:
- 3) In 2005 the Appellant/Complainant got installed diesel fuel pump section of 5 HP motor by availing bank loan of Rs. 3,50,000/- under Prime Minister Rozgar Yojana (PM JSY) for his son Sri. A.S. Madhu who has studied ITI in Diesel Mechanic. Accordingly, a business related to his son's qualification was established in the building with RR No. P-20852 lying vacant under the name and style M/s. New National Diesels Work Shop. Prior to his son's occupation a sawmill was running in the building assigned with the above RR Number. Power supply to the building assigned with the above RR number was arranged with the following particulars.

| Sl. No. | Particulars | Information |
|---------|----------------------------------|---|
| 1 | Name and address of the consumer | Sri. D. Abdul Saleem, C/o. M/s. Hazarat tenders, opp. To Hotel Mallige, Hosapete. |
| 2 | Date of Service | 15.01.1997 |
| 3 | Sanctioned Load | 9272 watts. |
| 4 | Tariff | LT-5(B) |

The installation was periodically inspected by the inspecting wing of LT Rating Authorities and found/reported no malpractices involved in the usage of power supply. The periodical bills serviced by GESCOM were cleared well within the specified due date. On 08-06-2010, the installation was inspected by the Vigilance Authorities of BESCOM and they reported theft of electricity by stopping the rotating disc by

inserting a foreign body through the hole drilled on the meter. A criminal case bearing No. 851/2010 was registered against the Appellant/Complainant apart from serving document notice for payment of back billing charges of Rs. 1,44,094/- and compounding fees of Rs. 54,000/-. The Appellant/Complainant remitted compounding fees of Rs. 54,000/- on 04-10-2010 and filed his objections for appeal. But the said appeal was rejected by the Superintending Engineer (Ele) O & M Circle, GESCOM, Bellary on 01-01-2011 on the grounds that as per Section 154 (5) of the Electricity Act 2003, the Appellate Authority of the Licensee-GESCOM has no power to deal with theft cases booked as a criminal case under Section 135 and 139 of the Electricity Act 2003. Against the said endorsement a Writ Petition bearing No. WP 60818/2011 was filed at the High Court Bench Dharwad, wherein, the Hon'ble Court directed the Appellate Authority to consider and dispose the appeal filed by the consumer. Accordingly, on payment of 50% of back billing charges of Rs. 72,048/- and appeal fees of 1% of Rs. 2,000/- the hearing of case was finally concluded, wherein the Appellate Authority Superintending Engineer (Ele) O & M Circle HESCOM, Hubballi, Circle, in the order No. 4375-77 dated 23-11-2013 acquitted the Appellant/Complainant of all the allegations of theft of electricity and directed to refund 50% of back billing charges of Rs. 72,048/- paid by him and to withdraw the balance 50% of back billing charges amount from the account of the concerned installation. Accordingly, 50% of back billing charges amount collected has already been refunded and the balance 50% withdrawn from the accounts of the installation. However, no orders for refund of compounding fees of Rs. 54,000/- collected from

Appellant/Complainant was ordered. Several letters were addressed to the Appellate Authority requesting to issue orders for refund of compounding fees paid by Appellant/Complainant. In reply the Chief Engineer (Ele) Corporate Planning GESCOM, Kalaburgi vide letter dated 03-01-2015 gave an endorsement that the said amount of compounding fees is not refundable as the same is remitted to the Government treasury as per rules. Against the said endorsement a letter dated 12-12-2018 was filed before the Ombudsman. In reply, an endorsement dated 17-12-2018 was given by the office of Ombudsman to file his complaint in Form 'A' before the CGRF Bellary. Accordingly, Appellant/Complainant filed his complaint in the prescribed Form before the CGRF Bellary District. The CGRF in its order dated 08-08-2019 has said that the CGRF has no jurisdiction to order for refund of compounding fees of Rs. 54,000/- remitted by the consumer. Aggrieved by this order of the CGRF Bellary District, the present appeal is filed before this authority.

- 4) Both the parties were informed vide this office letter No. OMB/G/G-366/2019/D-1355 dated 27-08-2019, regarding availability of provision in Sub-Regulation 1 of Regulation 20 of KERC (CGRF & Ombudsman) Regulations, 2004 for settlement through conciliation and mediation and to appear before this Authority on 11-09-2019. However, they have not availed the benefit of the said provision. The case was listed for hearing on 11-09-2019 and 25-09-2019.
- 5) Perused the appeal memo and the documents submitted along with it, parawise replies furnished by the Respondent-1/AEE and further submissions made by the Appellant/Complainant. The Appellant/Complainant was running diesel fuel pump since 2005 in the name of

his son by availing power supply from GESCOM through RR No. P-20852. On 08-06-2010 the unit of the Appellant/Complainant was inspected by the Vigilance Authorities of GESCOM and a criminal case bearing No. 851/2010 was registered under Section 135 (1) of the Electricity Act 2003, apart from serving demand notice for payment of back billing charges of Rs. 1,44,094/- and compounding fees of Rs. 54,000/-. The Appellant/Complainant filed an appeal before the Appellate Authority who is the Superintending Engineer (Ele) O & M Circle, GESCOM. After hearing the Vigilance AEE and the consumer the Appellate Authority came to a conclusion that no theft had occurred in the case of RR number of the Appellant/Complainant. Hence the Appellate Authority has ordered for refund of 50% of the back billing charges already paid by the Appellant/Complainant and withdraw the balance 50% of the back billing amount of Rs. 75,048/- from the accounts of the concerned installation. The order of the Appellate Authority dated 23-11-2018 has been accepted and implemented by the Licensee GESCOM.

- 6) While paying 50% of the back billing charges before filing the appeal before the Appellate Authority the Appellant/Complainant was compelled to pay a compounding fee of Rs. 54,000/- to avoid arrest. The Appellate Authority as per The Electricity Act 2003, has passed an order dated 23-11-2013 that the charges of theft against the Appellant/Complainant are not proved and ordered for refund of back billing charges. As far as the refund of back billing charges is concerned the grievance of the Appellant/Complainant has been attended to. However, the grievance of the Appellant/Complainant as regard to refund of the compounding fee of Rs. 54,000/- has not yet been

resolved. The stand of the Licensee is that this amount of Rs. 54,000/- which is compounding fee is remitted to the Government. As this amount is not with them it cannot be refunded to the Appellant/Complainant.

7) Protecting the interest of consumers is one of the important objectives of The Electricity Act 2003. From their point of view the stand taken by the Licensee GESCO and its officers may be correct. But from the point of view of the Appellant/Complainant, he has unnecessarily been burdened by payment of compounding fee for no fault of his. The Appellant/ Complainant in appeal memo with regard to the theft case filed against him has said that “the said news spread to all my relatives and one of my daughter at Kudligi succumbed to death because of shock on hearing the news”. The Appellant/Complainant is a tailor by profession who is having 5 dependents on his earnings. Th expenditure incurred by him as compounding fee has to be refunded to him to meet the ends of justice.

8) In view of the foregoing paras the following order: -

No. OMB/G/G-366/2019/D-1400

Dated: 29-11-2019

O R D E R

The Respondent-1/AEE to refund Rs. 54,000/- without interest through cheque or through adjustment in the future electricity bills of the Appellant/Complainant.

Sd/-
(S.S Pattanashetti)
Electricity Ombudsman.

- 1) Shri A. Srinivasa Rao,
C/o. V.N Tailor, H.No. 132/7,
W.No. 7, Near Anganawadi Centre-1,
Ananthashayanagudi Post,
Hosapete Taluk,
Bellary District.
- 2) The Assistant Executive Engineer (Elec),
O & M City Sub-Division-2, GESCOM,
Hosapete,
Bellary District.
- 3) Chairperson, Consumer Grievance Redressal Forum (CGRF)
Ballari District,
Superintending Engineer (Ele),
O & M Circle, GESCOM,
Satyanarayanapeth, 1st Cross,
Bellary – 583101.
- 4) PS to Hon'ble Chairman, KERC
- 5) PS to Hon'ble Member (M), KERC
- 6) PS to Hon'ble Member (R), KERC
- 7) PA to Secretary, KERC.
- 8) Chairperson of all CGRF's in the State.