

BEFORE THE ELECTRICITY OMBUDSMAN

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

Present: **B.V. Patil,**
Prl. District Judge (Retd)
Electricity Ombudsman,
Case No. OMB/G/G-412/2020
Dated 12/11/2020

In the matter of

Sri Veerangouda,
S/o. Late Bheemangouda,
At post Medinapur Village,
Lingasugur,
Raichur District.

Represented by:

Sri Sri S Mahaboob,
H.No. 13-2-2/195,
Arjunappa Colony, Yeramaras Camp,
Raichur – 584135.

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Appellant

Vs

1) The Assistant Executive Engineer (Elec.),
O & M Sub Division, GESCOM,
Ligasugur,
Opp to KSRTC Bus Stand,
Raichur - 584122.

2) Chairperson, Consumer Grievance Redressal Forum (CGRF)
Raichur District,
Superintending Engineer (Ele),
O & M Circle, GESCOM,
Near Basaveshwara Circle,
Opp to LIC Office,
Raichur - 584101.

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Respondents

1) This Appeal/Representation preferred before this authority by Sri.
Veerangouda, Lingasugur, Raichur District questioning the

legality of the order passed by the Consumer Grievance Redressal Forum Raichur (herein after referred as CGRF), bearing No. ಅಅ(ಎ)/ಉಲೆನಿ/ಹಿಆಸ/2020-21/SPA-346-353, dated 26.08.2020 under the provisions of Clause 21.2 of KERC Regulations 2004. The Appellant/Complainant submitted their appeal memo on 08.10.2020 after communication of the order passed by the CGRF. The CGRF passed an order on 26.08.2020, the appeal was registered in this office on 12.10.2020.

- 2) The brief facts of the case are that the installation bearing No. MEP-2 was serviced by the Respondent No. 1 in the name of the father of the Appellant Sri. Bheemanagouda for running a flour mill. Sri. Bheemanagouda is no more, his son Sri. Veeranagouda continued the running of the flour mill with the installation serviced in the name of his father. On 10.03.2019 Assistant Executive Engineer (Ele.) LT Rating inspected the installation and found that the meter was running slowly beyond the permissible limits at 92.26%, the Inspecting Authority reported that the consumer is liable to pay the difference at normal rates based on the percentage error. On the basis of the report submitted by the LT Rating Inspection Authority, the Assessing Officer issued a letter to the Appellant on 18.09.2019 requesting to pay back billing

charges of Rs. 23,069/-, second notice was issued on 10.12.2019.

The Appellant filed a complaint before the CGRF Raichur who dismissed the complaint holding that the Appellant is not a registered consumer.

- 3) The Appellant questioning the legality of the order passed by the CGRF filed the present appeal contending that;
 - a) The order passed by the CGRF, Raichur is illegal and incorrect, the same is an outcome of non-application of mind.
 - b) CGRF has failed to take into consideration that after the death of his father, the Appellant continued the running of the flour mill and paid the power consumption charges regularly to the Respondent No. 1 who recognized the Appellant as his consumer even though the installation was serviced in the name of his father who is no more.
 - c) CGRF has failed to take into consideration that before issuing an order of supplemental claims, the Respondent No. 1 has failed to comply with Regulation 29.03 of COS.
 - d) CGRF has failed to take into consideration that the order in the form of letter assessing the supplemental claims is without affording any opportunity of filing objections to the Appellant, the said order suffers from principles of natural justice.

- e) CGRF has failed to take into consideration that the Respondent No. 1 failed to comply with Regulation 4.3 of KERC (Electricity Supply Code) 2004, before issuing the order of supplemental claims. The order passed by the CGRF is illegal, perverse and capricious, prayed for allowing the appeal.
- 4) After registering the appeal, notice was issued to both the parties which was duly served. It was informed to both the parties through letter dated 12.10.2020 of this office in respect of the availability of Sub-Regulation 1 of Regulation 20 of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulation 2004, for settlement through Conciliation and Mediation, to appear before this authority on 03.11.2020. However, the parties did not availed the benefit of the said provision, the matter was not settled either through mediation or conciliation. Accordingly, the case was taken up for hearing.
- 5) On 03.11.2020 Sri S Mehaboob the representative of the Appellant present. The official of the Respondent No. 1 Sri Basavaraj Assistant Executive Engineer (Ele.) O & M Sub division GESCOM, Lingasgur were present.
- 6) Heard the arguments.

7) On the above contentions the point that arise for consideration of this authority is;

- a. Whether the order bearing No. ಅಅ(ವಿ)/ಉಲೆನಿ/ಹಿಆಸ/2020-21/SPA-346-353, dated 26.08.2020 passed by the CGRF Raichur District, rejecting the complaint of the Appellant is illegal, perverse, liable to be interfered by this authority?

8) My answers to the above point is in the;

- a. Affirmative.

For the following,

REASONS

- 9) I perused the appeal memo, the records produced along with the appeal including the order passed by the CGRF Raichur District.
- 10) Before adverting with the contentions raised by the Appellant, I would like to refer some of the undisputed facts in this case.
- 11) It is not in dispute that the installation bearing No. MEP-2 was serviced in the name of the father of the Appellant Sri. Bheemanagouda on 13.09.1972 for running a flour mill. Sri Bheemanagouda died, after the demise of Sri. Bheemanagouda his son Sri. Veeranagouda continued the running of the flour mill with the same installation and paid the electricity consumption charges regularly to the Respondent No. 1.

12) Regulation 2.18 of COS defines the word 'Consumer' which reads as under: -

“2.18 'CONSUMER' means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under the Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be.”

13) On plain regarding of the definition 'Consumer' referred supra makes it clear that the father of the Appellant was a registered consumer of the Respondent No. 1 which was not in dispute, after his death the Appellant who is running the flour mill connected with the said installation and received the electricity supply from Respondent No. 1 and paid the consumption charges. Furthermore, the Respondent No. 1 on the basis of the report submitted by the Assistant Executive Engineer (Ele.) LT Rating issued a letter in the form of an order making supplemental claims of Rs. 23,069/- and called upon the Appellant to pay the back billing charges, thereby the Respondent No. 1 recognized the Appellant as his consumer even though the installation was standing in the name of his deceased father. Under these circumstances the finding of the

CGRF that the Appellant is not a registered consumer and aggrieved party to file the complaint is erroneous and illegal.

- 14) It was submitted by the representative of the Appellant that while passing an order of supplemental claims, the Respondent No. 1 failed to comply Regulation 29.03 of COS, thereby the order passed by the Respondent No.1 demanding supplemental claims is incorrect and improper. Before considering this contention, I would like to refer Regulation 29.03 of COS which reads as under:-

“29.03 Supplemental claims: *For preferring the supplemental claims, the Licensee shall serve a provisional Assessment order with 15 days’ notice to the Consumer to file objections, if any, against the provision Assessment order on account of faulty meter or short claims caused due to erroneous billing and obtain his reply. After considering the objections of the Consumer the Licensee shall issue the final order. The Consumer shall be intimated to make the payment within 15 days of the date of intimation, failing which, the power supply to the installation shall be disconnected and such amount shall be deemed to be arrears of electricity charges. The Licensee shall indicate in the final order, the provision of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004.”*

- 15) On plain reading of Regulation 29.03 of COS referred supra makes it clear that for preferring the supplemental claims the Licensee Company shall serve a provisional assessment order with 15 days notice to the consumer for filing his objections if any against the

provisional order, after obtaining his reply, on considering the objections of the consumer, the Licensee Company shall issue the final order intimating the consumer to make the payment of supplemental claims within 15 days of the receipt of intimation. Admittedly in this case the Respondent No. 1 neither passed a Provisional Assessment Order, served the same on the consumer called upon him to submit his objections. Thereafter, final order was passed. In this case the Respondent No. 1 on the basis of the report submitted by the AEE (Ele) LT Rating Sub division sent a letter to the Appellant in the form of final order of supplemental claims. The letter/order passed by the Respondent No. 1 is clearly in violation of Regulation 29.03 of COS, the same is illegal and incorrect liable to be set aside.

- 16) It is submitted by the Appellant that the Respondent No. 1 is liable to serve a Provisional Assessment Order as per the procedure contemplated under Regulation 40.00 of COS. No such provisional order was served on him. Regulation 40.00 of COS reads as under:-

40.00 SERVICE OF NOTICE

Any notice to the Consumer by the Licensee shall be deemed to be duly served by the Licensee if it is:-

- a) Sent by registered post, under certificate of posting, by courier or other similar means or*
- b) Delivered by hand to the person residing at the Consumer's address*

c) Affixed at a conspicuous part of such premises in case there is no person to whom the same can, with reasonable diligence, be delivered.

17) On plain reading of the above said regulation makes it clear that the Provisional Assessment Order regarding the supplemental claims shall be served upon the Appellant in compliance with the Regulation 40.00 of the COS. However, in this case the service of the Provisional Assessment Order was complied with as per Regulation 40.00 of COS absolutely no material was produced either before the CGRF or before this authority. Therefore, the order of supplemental claims issued by the Respondent No. 1 suffers from noncompliance of Regulation 40.00 of the COS. The CGRF Raichur without examining the relevant regulations referred supra, without examination of the legality of the order of supplemental claims passed by the Respondent No. 1 in a right perspective, erroneously jumped to a conclusion that the Appellant is not an aggrieved party and registered consumer dismissed the complaint which is illegal and incorrect. The representative of the Appellant placed his reliance on a decision reported in ILR 2009 Karnataka 294, 2009 (4 KLJ 268). I have gone through the principles rendered in the said decisions, the principles rendered are squarely applicable to the case of the Appellant.

- 18) On the examination of order passed by the CGRF including the documents produced in the appeal, in view of the admitted facts as discussed supra, the order passed by the CGRF suffers from material legal infirmities, the same is perverse needs to be interfered by this authority. Accordingly, point No. 1 is answered in the affirmative.
- 19) In the result, I proceed to pass the following;

No. OMB/G/G-412/2020/D-1502

Dated: 12-11-2020

O R D E R

- 1) The appeal is allowed.
- 2) The order passed by the CGRF Raichur dated 26.08.2020 dismissing the complaint bearing No. ಅಅ(ಎ)/ಉಲೆನಿ/ಹಿಆಸ/2020-21/SPA-346-353, is set a side.
- 3) The order in the form of the letter issued by the Respondent No. 1 dated 10.08.2019 and the letter dated 10.12.2019 are set a side.
- 4) The matter is remitted back to the Assistant Executive Engineer (Ele.), O & M Sub division, Lingasgur directing to serve a Provisional Assessment Order of supplemental claims to the consumer calling upon him to file his objections. On considering the objections of the consumer, after affording an opportunity of the hearing to the Appellant, Assistant Executive Engineer (Ele.) shall pass a final order and serve the same on the Appellant in compliance with Regulation 29.03, 40.00 and other relevant regulations of COS.

Sd/-
(B.V. Patil)
Electricity Ombudsman.

- 1) Sri Veerangouda,
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- 2) Sri S Mahaboob,
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Opp to LIC Office,
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- 5) PS to Hon'ble Chairman, KERC
- 6) PS to Hon'ble Member (M), KERC
- 7) PS to Hon'ble Member (R), KERC
- 8) PA to Secretary, KERC.