

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/B/G-414/2020
Dated 14/12/2020

In the matter of

Sri B.H Gowdru Yane B. Hanumantappa,
Sukha Sagar Sweet House,
Food Production Unit,
Arun Building,
Shivamogga Road,
Jai Kannada Nivasa, H.L.K Road,
Chitradurga – 577501.

- Appellant

Vs

1) The Assistant Executive Engineer (Elec),
O & M Rural Sub-Division, BESCO,
Opp to Articulture Office,
Chitradurga – 577501.

2) Chairperson, Consumer Grievance Redressal Forum (CGRF)
Chitradurga Division Office, BESCO,
Behind DC Office,
Chitradurga – 577501.

- Respondents

- 1) This Appeal/Representation preferred before this authority by Sri B.H Gowdru Yane B. Hanumantappa questioning the legality of the order passed by the Consumer Grievance Redressal Forum Chitradurga District (herein after referred as CGRF), bearing No. ಮಇಂ(ವಿ)/ಚಿವ/ಅಎಂ(ಕ)/ಗ್ರಾ.ಕುಂ.ಕೊ.ನಿ.ವೇ./20-21/4225-230, dated 12.10.2020 under Clause 21.2 of KERC Regulations 2004. After

communication of the order passed by the CGRF, Appellant/Complainant submitted their appeal memo through courier service, this office received the appeal memo on 12.11.2020. The appeal was registered in this office on 17.11.2020, hence the appeal is in time.

- 2) The brief facts of the case are that the installation bearing No. MPHP-11 with a sanctioned load of 18 HP under LT-5 Tariff category was installed and serviced by the Respondent No. 1 in the name of the Appellant for running a food processing unit in Chitradurga rural area at Hiregutanur Section. On 30.05.2018 the officials of the LT Rating Sub Division, Chitradurga inspected the installation and found that the Appellant is using 17 HP more load of power than the one sanctioned for the installation and submitted a report to the Rural Sub Division of Respondent No. 1. On the basis of such a report, the Respondent No. 1 passed a final order of back-billing charges to the tune of Rs. 18,360/-, the final order was served on the Appellant for which objections were filed. The Appellant later made sufficient letter correspondence complaining that after sanctioning the loan by the bank for installation of the machinery to his food processing unit, the bank authorities released a partial loan amount for purchasing the machines, the Appellant

purchased the machines kept in his factory premises without power connection. The bank authorities did not released the balance loan amount for installation and commencement of manufacturing process, the Appellant kept the newly purchased machines idle in the factory, he did not used the said machines for manufacturing activity, therefore the question of using excess load of power is unwarranted prayed for cancellation of the final order of back billing charges. On the basis of the objections filed by the Appellant, the Executive Engineer (Ele.) directed the concerned to conduct a local inspection and submit their report.

- 3) On 01.05.2019 there was an accidental fire in the godown of the Appellant due to the short circuit, who sustained huge loss of Rs. 1,46,50,000/-. The Section Officer, Sri Shivayogi and Assistant Executive Engineer (Ele.), Rural Sub Division, Sri Ramesh have acted negligently and committed several mistakes in conducting the investigation and submitting their report regarding the accidental fire, therefore the Appellant suffered mental and physical agony and sought for taking appropriate action against the erring officials of the Respondent No. 1 and prayed the Executive Engineer (Ele.), Davangere for taking appropriate action against the erring officials and also for rewarding the compensation.

However, the Executive Engineer (Ele.), Davangere District informed the complainant that the relief sought by the Appellant does not come within his jurisdiction and directed the Appellant to approach the CGRF Chitradurga. Accordingly, the Appellant filed a complaint before the CGRF Chitradurga, after hearing the parties, CGRF Chitradurga ordered to pay back-billing charges of Rs. 1,530/- and disposed off the complaint.

- 4) 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, Chitradurga is illegal and incorrect, the same is an outcome of non-application of mind.
 - b) The CGRF has failed to take into consideration that the machinery purchased by the Appellant were not at all connected with any power supply and used for food processing, no power was consumed above the sanctioned load, such is the case the passing of order by the Respondent No. 1 to pay back-billing charges is illegal.
 - c) The CGRF has failed to take into consideration that the order passed by the Assistant Executive Engineer (Ele.), Chitradurga dated 08.01.2019 who cancelled the order of back billing charges.

- d) The CGRF has failed to take into consideration the spot inspection report dated 05.01.2019 submitted by the Assistant Executive Engineer (Ele.), O & M Rural Sub division, Chitradurga who reported that prima facia the Appellant is not using the actual sanction load of power to his food processing unit.
- e) The CGRF has failed to take into consideration that due to the short circuit an accidental fire was taken place in the factory godown of the Appellant, the Appellant sustained huge loss for which the officials Sri Shivayogi, Section Officer and Assistant Executive Engineer (Ele), Sri Ramesh did not submitted the factual report to the concerned officers, due to their dereliction of duty the Appellant has sustained huge loss and suffered both physical and mental agony and prayed for appropriate action against the erring officials by allowing the appeal.
- 5) 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 17.11.2020 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 30.11.2020. However, the parties did not avail the benefit of the said provision, the matter was not settled either through mediation or conciliation. Accordingly, the case was taken up for hearing.

- 6) On 30.11.2020 Appellant present and Assistant Executive Engineer (Ele.), Rural Sub Division, Chitradurga present and submitted their arguments.
- 7) The Assistant Executive Engineer (Ele.), Chitradurga filed his written arguments along with records wherein the servicing of installation bearing No. MPHP-11 with sanctioned load of 18 HP under LT-5 Tariff category was admitted. It is contended that on 30.05.2018 Assistant Executive Engineer (Ele.), LT Rating Sub Division, Chitradurga inspected the installation of the Appellant and found that the Appellant has stored the machineries with capacity of 18 HP above the sanctioned load, totally they found the machines with a capacity of 34.5 HP being used for food processing, requested the Respondent No. 1 for taking appropriate action for installation of the new machines of 16.5 HP capacity. On the basis of the said report the Respondent No. 1 passed a final order of back billing charges of Rs. 18,360/-, directed the

Appellant to pay the back-billing charges. On 30.08.2018 the Appellant filed the objections and reported that he is not using 17 HP excess load as reported by the LT Rating Sub Division and prayed for cancellation of the final order of back-billing charges. The Respondent No. 1 directed the Section Officer to submit his report on the objections filed by the Appellant, accordingly on 06.09.2018 a report was submitted by the Section Officer. On 21.01.2019 the Appellant was called upon to pay the back-billing charges. On 14.03.2019 the Appellant for having not paid the back billing charges, the power supply was disconnected at LT channel as the factory gate was locked, a notice was also affixed on the wall of the Appellant's factory. The Appellant filed a complaint before the CGRF on 12.10.2020 the CGRF passed an order to pay back billing charges of Rs. 1,530/-.

- 8) It is further submitted that on 01.05.2020 during morning hours between 3 AM to 5 AM there was an accidental fire in the factory premises of the Appellant which was reported by him. Even though the Appellant complained that the Section Officer did not received the phone call of the Appellant regarding the accidental fire, the Section Officer reported that he did not received any phone call from the Appellant on 01.05.2020. On 18.05.2020 the Appellant

served a notice regarding the accidental fire on the Section Officer who was called upon to submit his report, who submitted the report to the Respondent No. 1. It is submitted that on 01.05.2019 the accidental fire taken place in the godown of the Appellant was not due to the short circuit, the log book entries discloses that there was an interruption in power supply between 2.10 AM to 7 AM in the said line, therefore the accidental fire was not due to the short circuit, hence the Respondent No. 1 sought for dismissal of the appeal.

- 9) Heard the arguments.
- 10) On the above contentions the point that arise for consideration of this authority is;
 - a. Whether the order bearing No. ಮಇಂ(ವಿ)/ಚಿವ/ಅಎಂ(ಕ)/ಗ್ರಾ.ಕುಂ.ಕೊ.ನಿ.ವೇ./20-21/4225-230, dated 12.10.2020 passed by the CGRF Chitradurga, rejecting the complaint of the Appellant is illegal, perverse, liable to be interfered by this authority?
- 11) My answer to the above point is;
 - a. Partly in the Affirmative.

For the following,

REASONS

- 12) I perused the appeal memo, the records submitted along with the appeal, the documents submitted by the Respondent No. 1 and his written arguments including the order passed by the CGRF Chitradurga.
- 13) Before advertng with the contentions raised by the Appellant, I would like to refer some of the undisputed facts in this case.
- 14) It is not in dispute that the installation bearing No. MPHP-11 with a sanctioned load of 18 HP under LT-5 Tariff category was installed and serviced by the Respondent No. 1 in the name of the Appellant for running a food processing unit in Chitradurga rural area at Hiregutanur Section. On 30.05.2018 the officials of the LT Rating Sub Division, Chitradurga inspected the installation and found that the Appellant is using 17 HP more load of power than the one sanctioned for the installation and submitted a report to the Rural Sub Division of Respondent No. 1. On the basis of such a report, the Respondent No. 1 passed a final order of back-billing charges to the tune of Rs. 18,360/-, the final order was served on the Appellant for which objections were filed. Later the Appellant did letter correspondence complaining that after sanctioning the bank loan for installation of the machinery to his food processing

unit, the bank authorities released a partial loan amount for purchasing the machines, the Appellant purchased the machines kept in his factory premises without power connection. The bank authorities did not released the balance loan amount for commissioning and process of manufacturing food products, hence the machines were kept idle in the factory, he did not used the said machines for manufacturing activity, therefore the question of using excess load of power is unwarranted. On the basis of the objections filed by the Appellant, the Executive Engineer (Ele.) directed the concerned to conduct a local inspection and submit their report. On 05.01.2019 the Assistant Executive Engineer (Ele.), O & M Rural Sub Division, submitted his report that the Appellant has not used the sanctioned load of power, he has not used the newly purchased machines for manufacturing activity therefore prayed for cancellation of the order of back billing charges. On 08.01.2019 Assistant Executive Engineer (Ele.) passed an order cancelling the order of back-billing charges. Furthermore, the Respondent No. 1 did not followed the procedure contemplated under Regulation 29.03 of COS while passing the final order of back-billing charges. The CGRF without examining the orders passed by the Assistant Executive Engineer (Ele.),

O & M Rural Sub division, Chitradurga erroneously ordered to pay Rs. 1,530/- towards back-billing charges assuming that the Appellant has used the newly purchased machines to manufacture the food products for a period of 1 month. The order of the CGRF is based on assumptions and presumptions that the Appellant would have consumed the power by installing the newly purchased machines to manufacture the food products which is contrary to the orders passed by the Assistant Executive Engineer (Ele.), O & M Rural Sub Division, Chitradurga. When the Appellant purchased the machines and kept in the factory premises without power connection, the question of using the said machines for any manufacturing activity and consumption of power above the sanctioned load by the Appellant is unwarranted, therefore the order passed by the CGRF directing the appellant to pay Rs. 1,530/- is illegal and incorrect liable to be set aside.

- 15) It is submitted that on 01.05.2019 there was an accidental fire in the godown of the Appellant due to the short circuit, the Appellant sustained huge loss of Rs. 1,46,50,000/-. The Section Officer, Sri Shivayogi and Assistant Executive Engineer (Ele.), Rural Sub Division, Sri Ramesh have acted negligently and committed several mistakes in conducting the investigation and submitting

their report regarding the accidental fire, therefore the Appellant suffered mental and physical agony and sought for taking appropriate action against the erring officials of the Respondent No. 1. The records produced in this case clearly indicates that the power supply to the Appellant was disconnected on 14.03.2019, and a notice of disconnection was affixed on the wall of the factory of the Appellant. Such is the case there was no power supply to the factory of the Appellant on the date of the accidental fire. Furthermore, the logbook entries discloses that on 01.05.2019 from morning 2.10 AM to 7.00 AM there was interruption of power supply to the 11 KVA electrical line, there was no power supply. When the power connection to the installation of the Appellant was disconnected which was notified to the Appellant, there was an interruption in the power supply of the 11 KVA line as per the log book entries, the question of accidental fire in the premises of the Appellant by the short circuit is unwarranted. The Appellant has failed to produce any material evidence before this authority to prove that on 01.05.2019 there was an accidental fire in the godown of the Appellant due to short circuit, thereby the Appellant has failed to prove the same.

16) It is submitted that the Section Officer, Sri Shivayogi and Assistant Executive Engineer (Ele.), Rural Sub Division, Sri Ramesh acted negligently in submitting their report, the Appellant sought for taking appropriate action against the erring officials. It is an admitted fact that the Electric Ombudsman is neither an appointing nor a disciplinary authority of the above named officials. Such is the case this authority is not empowered under the KERC (CGRF & Ombudsman) Regulations 2004, to initiate appropriate disciplinary action against the above named erring officials. If at all the Appellant had any grievance against the said officials, he is at liberty to approach the disciplinary authority for initiating appropriate action against the erring officials. Accordingly point No. 1 is answered partly in the affirmative.

17) On examination of the order passed by the CGRF Chitradurga, the same suffers from material infirmities, the same is perverse, liable to be interfered by this authority.

18) In the result, I proceed to pass the following;

No. OMB/B/G-414/2020/D-1510

Dated 14-12-2020

O R D E R

a) The appeal is allowed.

b) The order passed by the CGRF bearing No. ಮಇಂ(ಎ)/ ಚಿವೆ/ಅಎಂ(ಕೆ)/ಗ್ರಾ.ಕುಂ.ಕೊ.ನಿ.ವೇ./20-21/4225-

230, dated 12.10.2020 directing the Appellant to pay back-billing charges of Rs. 1,530/- is set aside.

- c) The Respondent No. 1 is directed to refund Rs. 9,180/- deposited while presenting the complaint before the CGRF, Chitradurga.

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

- 1) Sri B.H Gowdru Yane B. Hanumantappa,
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Shivamogga Road,
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Chitradurga Division Office, BESCO,
Behind DC Office,
Chitradurga – 577501.
- 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.