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/H/G-406/2020

Dated 30/12/2020

In the matter of

The Principal,
Jawaharlal Nehru Medical College,
Nehru Nagar,
Belagavi – 590010.

Represented by:
Smt. Poonam Patil, Advocate,
1802, Embassy Habitat Apartment,
Vasanthnagar,
Bangalore – 560001. - Appellant

Vs

1) The Assistant Executive Engineer (Elec.),
O&M City Sub Division-3, HESCOM
Neharu Nagar,
Belagavi – 590010.

2) Chairperson, Consumer Grievance Redressal Forum (CGRF)
Belgavi District,
Superintending Engineer (Ele),
O & M Circle, HESCOM,
Neharu Nagar,
Belagavi – 590010. - Respondents

1) This Appeal/Representation preferred before this authority by The Principal, Jawaharlal Nehru Medical College, Belagavi District questioning the legality of the order passed by the Consumer

Grievance Redressal Forum, Belagavi (herein after referred as CGRF), bearing No. ಪ್ರಕರಣ ಸಂಖ್ಯೆ:20/2020, ಬೆ/ಗ್ರಾವೆ/ಅಇಂ(ವಿ)/ಉಲೆನಿ/ಹಿಸ–2/2020–21/2717–22, dated 29.06.2020 under the provisions of Clause 21.2 of KERC Regulations 2004. The Appellant/Complainant submitted their appeal memo on 11.09.2020 after communication of the order passed by the CGRF. The CGRF passed an order on 29.06.2020, the appeal was registered in this office on 11.09.2020. The Appellant in its appeal memo stated that the Appellant was actually prevented from filing the appeal within 30 days of the receipt of CGRF order Belagavi due to Covid-19 pandemic. The Appellant could not travel to Bangalore and submit the documents and instructions to his Advocate. The reasons shown seems to be bonafide, hence the delay in filing the appeal is condoned.

2) The brief facts of the case are that the installation bearing RR No. HTS 106 of CSD III, HESCOM, Belagavi with a contract demand of 1125 KVA under HT 2 (c) (1) Tariff category in the name of the Principal, Jawaharlal Nehru Medical College and two LT sub meters to the hostel and college of the Appellant under the Tariff category LT 2 (b) and LT 3 (commercial load) were installed and serviced by the Respondent No. 1. On 01.04.2018 an

agreement for Wheeling and Banking the power with M/s. Belgaum Renewable Energy Private Limited (herein after called as BREPL) was entered by the ESCOMS, the approval and concurrence was also given by the HESCOM Corporate office Hubballi and Chief Engineer (Ele.) SLDC, KPTCL. The Appellant received the bills for the month from April 2018 to November 2018 adjusting the wheeled units to the Appellant's main meter HTS 106 and the sub meters LT 2 (B) and LT 3 respectively, wherein the Respondent No. 1 charged for the units consumed by the Appellant, after deducting the wheeled units in the gross consumption of the above HT installation. Accordingly, the Appellant cleared the bills promptly. On 22.02.2019, the Respondent No. 1 issued a demand notice demanding the payment of Rs. 86,45,029/- as an audit short claims (revised bills based on objections raised by the Audit party) on the ground that wheeled units cannot be adjusted to the sub meters, accordingly demand was made from June 2018 to December 2018. The Appellant replied to the demand letter on 05.03.2019 bringing it to the notice of the Respondents that already they have billed by their open access vendor BREPL for the said units and the same was paid by the Appellant to BREPL and prayed for dropping the audit short

claims. Alternatively sought to adjust the access units withdrawn from the LT sub meters to another installation of the Appellant's HTS 46. On 21.03.2019 the Respondent No. 1 issued a revised demand for Rs. 53,34,179/-, the Appellant was forced to pay the revised demand under the threat of disconnection, as the power supply was for the education institution, hostel and college. The payment of revised demand was made under protest on 01.04.2019. Later the Appellant filed a complaint before the CGRF seeking adjustment of wheeled units from sub meter to HT meters on 26.03.2019. The complaint was returned holding that the prayer of the Appellant does not comes within the jurisdiction of the CGRF. On 06.06.2019 the Appellant received a communication rejecting the prayer for adjustment of units to HT connections on the ground that neither PPA nor the KERC Regulations provide for adjustment of wheeled units from one meter to another. The Appellant sought clarification from the Hon'ble KERC and also SLDC on the said issue, KERC redirected the Appellant to approach HESCOM and SLDC addressed a communication to the General Manager technical Hubballi seeking clarification. On the basis of endorsement issued by the Hon'ble KERC, the CGRF being an appropriate forum to redress the grievance of the

consumer, the Appellant filed a complaint on 28.12.2019. The Respondent No. 1 on appearance before the CGRF filed their objections, after hearing, CGRF dismissed the appeal.

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, Belagavi 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 bare reading of definition of the Complaint and the Consumer as defined under KERC (CGRF & Ombudsman) Regulations 2004, makes it clear that the dispute of the present kind are amenable to the jurisdiction of CGRF.

c) The CGRF has failed to take into consideration that though the power was supplied to the Appellant by BREPL through a wheeling and banking agreement, the bills were raised by the HESCOM for the above said period not only in respect of the wheeled energy from BREPL, during this period the Appellant was billed for the units supplied by the HESCOM after deducting the wheeled units.

d) The CGRF has failed to take into consideration that Regulation 5 of the KERC (CGRF & Ombudsman) Regulation 2004, the

Appellant certainly falls under definition of consumer under the KERC (terms and conditions for open access) Regulations 2004.

e) The CGRF has failed to examine Clause 2 (c) and 2 (j) of KERC (terms and conditions for open access) Regulations 2004.

f) The CGRF has failed to take into consideration that the Respondents have relied on Clause 29.03 of COS while issuing revised bill or supplemental claims of COS, the said regulation is applicable only for the consumers. The initiation of the proceedings under Regulation 29.03 of COS and issuing of supplemental claims bills indicates that the Respondents impliedly accepted the Appellant as a consumer, the Respondents cannot blow hot and cold at the same time.

g) The CGRF has failed to take into consideration that supplemental claim is in respect of 558718 units of access wheeled energy through two sub meters for which already the payment was made by the Appellant to the BREPL, now the Respondents are seeking supplemental claims in respect of the said consumption of the energy on second time, due to the sheer negligence of the Respondents No. 1, 3 and 4 Appellant was

forced to make payment for the said units twice, one to the vendor BREPL and to the Respondents as a supplemental claims which is illegal, arbitrary, amounts to unjust enrichment.

h) The CGRF has failed to take into consideration that Appellant has not used 558718 units to its sub meters from the power supplied through HESCOM which was admitted by the Respondents.

i) The CGRF has failed to take into consideration that KERC (terms and conditions for open access) Regulations 2004, does not prohibit or deny the adjustment of units already recorded through a sub meter from HT meter.

j) The CGRF has failed to take into consideration that the wheeling and banking agreement was duly signed by the responsible officials of all the distributions licensee companies in the state, the same binds on them. If at all the wheeling and banking agreement was not duly signed by the licensee company, they have no power to issue revised supplemental claim bills. The order passed by the CGRF is illegal perverse, 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 11.09.2020 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 28.09.2020, 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 28.09.2020 the advocate of the Appellant present. The Respondent send parawise remarks, copy of the same furnished to the advocate of the Appellant. On 05.11.2020 Advocate for Appellant addressed her oral arguments and filed written arguments. The copy of the written arguments of advocate of the Appellant was sent to the Respondent through E-mail. Respondent No. 1 sent his written arguments.

6) Heard the arguments.

7) On 21.09.2020 the Respondent No. 1 submitted parawise remarks/ wherein the servicing of installation HTS 106 in the name of the Appellant was admitted. It is contended that the Appellant has not

availed and consumed the electricity from HESCOM for RR No. HTS 106 during the period from 2018 to 2019, therefore the Appellant is not a consumer of HESCOM. The Appellant has two LT supplies for hostels under LT 3 and college under LT 2(b) Tariff category are admitted. The Appellant has entered into a wheeling and banking agreement with M/s. BREPL and HESCOM is not a party or signatory to the said agreement. There is no privity of contract between Appellant and HESCOM with respect to wheeling and banking agreement. The approval of W & B by the HESCOM was admitted. The issuing of bills for the months from April 2018 to Nov 2018 wherein the wheeled units were adjusted to main meter HT 106 was admitted, however the bills were also adjusted to the sub meters LT 2 (b) and LT 3 was denied. The Appellant was not informed the fact that the wheeling energy units obtained through open access for HT unit were wrongly and unauthorizedly utilized by the Appellant for those sub meters without consent and knowledge of the HESCOM. The Appellant is permitted to use or utilize the wheeling energy units obtained through open access for only to HTS 106, the same should not have been used by the Appellant for its LT units. When the Appellant came to know about the said fact, HESCOM issued a demand

notice of supplemental claims dated 22.02.2019 for payment of Rs. 86,45,029/- towards audit short claims as the wheeling units cannot be adjusted to the sub meters. The short claim raised by the Respondents is proper and correct. After making re-audit the Appellant was liable to pay Rs. 53,34,174/- instead of Rs. 86,45,029/- as calculated earlier, the Respondent No. 1 issued a revised demand on 21.03.2019. The contention of the Appellant that he was forced to pay the revised amount under the threat of disconnection was denied. It is submitted that the Appellant voluntarily paid the revised bill, the bill was paid by the Appellant under protest was denied. The Appellant wrongly approached the CGRF Belgaum by filing a complaint dated 26.03.2019, the complaint was returned on the ground that the prayer sought by him is outside the purview of CGRF. The Appellant approached Hon'ble KERC and also SLDC seeking clarification was admitted. The reliance placed by the Respondent No. 1 on regulation 29.08 and 29.03 of COS was admitted.

8) It is further contended that merely because HESCOM has approved the W & B agreement and wheeled units were deducted from the Appellant's bill in the initial stage does not empower the Appellant to make any claims either before the CGRF or before this authority,

as the adjustment to sub meters LT 2 (b) and LT 3 were done by mistake, when the mistake was notified to the Respondents at a later stage, revised bill was issued. It is the mistake of the Consumer/Appellant who has concealed the fact to the Respondent No.1. such is the case attributing negligence on the part of the HESCOM does not arise. The Appellant has to bear the financial brunt wherein he has been made to pay twice for the same units (totally 558718 units) was denied. The Appellant has to use the wheeling energy for the HT unit only, he is not entitled to utilize the said energy for LT units and to claim the adjustment of bills in respect of LT units. Therefore, the question of refund of the amount claimed by the Appellant is unwarranted.

9) The Appellant has entered into W & B agreement with BREPL, Respondent No. 1 approved the agreement and permitted the Appellant to draw the wheeling energy from BREPL only to HTS 106 unit. The Appellant is not permitted to use wheeled energy for its other units under the advantage of W & B agreement, after noticing the fact that the Appellant has benefitted the utilization of access wheeling units for LT units, the HESCOM has issued the revised bills. The Appellant has availed wheeling energy for his installation HTS 106 instead of energy from HESCOM during the

above said period, he cannot be termed as a consumer for the said period in respect of HTS 106. The issuing of revised bill by HESCOM to the Appellant in respect of LT units cannot be understood that the Appellant is also a consumer of HESCOM pertaining to HTS 106. It is admitted that 558718 are units in access of wheeled energy, this access energy should not have been used by the Appellant towards LT units without approval from the Respondent No. 1. The Appellant has drawn the access energy without permission from the HESCOM, therefore if the Appellant paid the energy charges to the M/s. BREPL, it is due to the fault of the Appellant, HESCOM or the Respondents cannot be made liable for such a mistake. Regulation 4 (4) phase 4 of KERC (T & C for open access) regulation 2004, provides that from 01.04.2008 open access shall be permitted only for HT installations with a contract demand of 1 MW and above. Therefore, the question of adjusting open access energy obtained from HT units to LT units is not at all permitted, regulations does not permit for adjustment of the same. It is further submitted that W & B agreement is entered is a privity of contract between the Appellant and BREPL and HESCOM is not signatory to the agreement. HESCOM only approved the agreement, the approving authority cannot be termed as a party to

the contract for which approval was given. The issuing of revised bills in respect of LT units is a different issue, the Appellant is trying to mix up the issues and trying to take the undue advantage. Therefore, the Respondent prayed for dismissal of the appeal.

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

    a. Whether the order bearing No. ಪ್ರಕರಣ ಸಂಖ್ಯೆ:20/2020, ಬೆ/ಗ್ರಾವೆ/ಅಇಂ(ವಿ)/ಉಲೆನಿ/ಹಿಸ–2/2020–21/2717–22, dated 29.06.2020 passed by the CGRF Belagavi District, rejecting the complaint of the Appellant is illegal, perverse, liable to be interfered by this authority?

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

    a. Affirmative.

For the following,

REASONS

12) I perused the appeal memo, the records produced along with the appeal including the order passed by the CGRF Belagavi District and written arguments.

13) Before adverting 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 RR No. HTS 106 of CSD III, HESCOM, Belagavi with a contract demand of 1125 KVA under HT 2 (c) (1) Tariff category in the name of the Principal, Jawaharlal Nehru Medical College and two LT sub meters to the hostels and college of the Appellant under the Tariff category LT 2 (b) and LT 3 (commercial load) were installed and serviced by the Respondent No. 1. It is contended by the Respondents that though the Appellant is a consumer of RR No. HTS 106 CSD III HESCOM Belagavi, the Appellant has not availed and not consumed the electricity from HESCOM for the HTS 106 during 2018 and 2019, therefore the Appellant is not a consumer of HESCOM for the said installation during the above said period, the Appellant has no right to either to file a complaint before the CGRF or prefer an appeal before this authority. The crucial question that arises for the consideration of this authority is as to whether the Appellant is a consumer of the Respondents for its installation HTS 106 or not.

15) Before considering this contention, it is useful to refer the definition Consumer and Complaint defined under KERC (CGRF & O) Regulations 2004, which reads as under:

> ***2 (g)*** *'Complaint' means any grievance made by a consumer with regard to supply of electricity by the*

licensee, provided that grievance falling within the purview of any of the following provisions of the Act are excluded from the jurisdiction of the Forum:

(1) unauthorized use of electricity as provided under Section 126 of the Act
(2) offences and penalties as provided under Section 135 to 139 of the Act
(3) accident in the distribution, supply or use of electricity as provided under Section 161 of the Act, and

2 (h) *'Consumer' means any person who is supplied with electricity for his own use by a licensee under this 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.*

As could be seen from the records produced in this appeal makes it clear that the installation bearing RR No. HTS 106 was installed and serviced by the Respondents. On 28.03.2018 wheeling and banking agreement was entered between KPTCL, HESCOM, BESCOM, CESCOM, MESCOM with M/s. Belgaum Renewable Energy Private Limited (BREPL) for wheeling and banking the power generated by the BREPL through the transmission lines of the above said ESCOMS, who agreed to wheel and bank the power generated by the BREPL to various its consumers including the Appellant. The copy of the Wheeling and Banking agreement produced in this appeal makes it clear that the Appellant who is a Consumer of the Respondents is not a signatory to the agreement.

The agreement was duly signed by the ESCOMS and BREPL through which they agreed to wheel and bank the power produced by the BREPL to the 12 consumers of the ESCOMS, wherein the Appellant was also included, such is the case the merely because the BREPL injected the power generated by it through the transmission line of the HESCOM to the installation of the Appellant bearing RR No. HTS 106 does not excludes, the Appellant from the definition of the Consumer defined under Electricity Act as well as under the KERC (CGRF & O) Regulations 2004. Furthermore, the Appellant is a non-exclusive consumer who purchases/consumes power from both HESCOM and BREPL, the monthly bills were raised by the HESCOM for the power wheeled by the BREPL and also the power consumed from the HESCOM. At no point of time the bills were raised by BREPL for the power wheeled by them to the Appellant. The bills raised by the Respondent No. 1 for the said period prima ficia indicates that the Appellant used the power wheeled by the BREPL and also the power supplied by the HESCOM, the units of power wheeled by the BREPL and the units supplied by the HESCOM to the installation of the Appellant was separately shown in the bills raised by the Respondents.

16) Clause 2 (c) of the KERC (Terms and Conditions for Open Access) Regulation 2004, deals with definition Consumer which reads as under:

> ***2 (c) "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 this 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;*

Clause 2 (j) of the Regulation reads as under:

> ***2 (j) "Open Access Customer"*** *means a consumer permitted by the Commission to receive supply of electricity from a person other than distribution licensee of his area of supply, and the expression includes a generating company and licensee, who has availed of or intends to avail of open access.*

On conjoint reading of the above said regulations makes it clear that the Appellant who is a non-exclusive open access consumer in this case comes under the definition of Consumer under the said regulations.

17) The records produced in this case clearly indicates that the Respondents issued an order of supplemental claims under Regulation 29.03 of COS. This regulation is only applicable to a consumer defined under the Electricity Act and also KERC Regulations. The Respondents while passing an order of

Supplemental claims treated the Appellant as a consumer and passed such an order. If at all the Appellant is not a consumer of the HESCOM as contended by the Respondents, they had no power or jurisdiction to pass any order of supplemental claims under Regulation 29.03 Of COS. Therefore, looking from any angle the contention of the Respondents that the Appellant is not a Consumer in respect of installation RR No. HTS 106 does not holds good, the Respondents cannot blow hot and cold at the same time.

18) It is contended by the Respondents both in parawise remarks and in written arguments that the wheeling and banking agreement is a privity of contract between the Appellant and BREPL, HESCOM is not a signatory to the agreement, HESCOM has only approved the agreement. the approving authority cannot be termed as party to the contract for which approval is given.

19) The copy of the wheeling and banking agreement produced at Annexure 26 clearly discloses that the agreement was entered between 5 ESCOMS companies with M/s. Belgaum Renewable Energy Private Limited. This is a contract between ESCOMS and M/s. BREPL who agreed to wheel and bank the power generated by BREPL through ESCOMS to its 12 consumers including the Appellant. This agreement was duly signed by the representative

of the 5 ESCOMS and the representative of the BREPL. 12 consumers including the Appellant are not the signatories and parties to the agreement. Through this agreement HESCOM entered into a contract with the BREPL to wheel and bank energy through open access to the Appellant for installation bearing No. HTS 106. Such is the case HESCOM is not the signatory to the said agreement, it has only approved the same is contrary to the recitals of the agreement.

20) It is contended by the Respondents that the wheeled units of energy obtained from BREPL through open access for the installation HTS 106 were wrongly and unauthorizedly utilized by the Appellant for the sub meters 1 and 2. The Appellant is permitted to use or utilize the wheeling energy units only for HTS 106. When the Respondents noticed the said mistake they issued a demand letter insisting for a payment of short claims on the ground that wheeling units cannot be adjusted to the sub meters. Therefore, the demand made by the Respondents is legal.

21) On perusal of the wheeling and banking agreement makes it clear that the Appellant who is not a party to the said agreement, there is no tripartite agreement between ESCOMS, BREPL and the Appellant in allotment of wheeled units either to the HT meter or

to the LT meters. It is the HESCOM along with other ESCOMS entered into a contract with BREPL for wheeling and banking of the power through open access to 12 consumers out of which Appellant is also one of the consumer. Furthermore, absolutely there is no role of the Appellant in allotment of wheeled units either to the HT meter or to the LT meters. The Respondents who agreed to allot the wheeled units to the installation bearing RR No. HTS 106 of the Appellant. The copies of the bills raised by the Respondents produced in this case for the above said period clearly indicates that the Respondents permitted to use the wheeled units from the BREPL to the installation of the Appellant HTS 106 along with sub meters LT 2 (b) and LT 3, they raised the bills in respect of the consumption of HTS 106 and the consumption for sub meters No. 1 and 2 separately including the units utilized by the Appellant from the HESCOM. Thereby it is clear that there is no role of the Appellant in allotment of wheeled units either to the HT meter or LT meters. The Respondent No. 1 in his written arguments admitted that adjustment of the wheeled units from HTS 106 to the sub meters LT 2 (b) and LT 3 was done by them as a mistake. The Appellant utilized the wheeled units of BREPL by the Respondents to both HTS 106, LT 2 (b) and LT 3 units and

paid the electricity consumption charges as per the bill raised by the Respondents to the BREPL, as per Clause 6.14 of the Wheeling and Banking agreement. The Respondents by issuing a supplemental claims bill once again called upon the Appellant to pay Rs. 53,34,179/- power consumption charges for LT 2 (b) and LT 3 meters, even though the Appellant has already paid the power consumption charges to the BREPL as per the bills raised by the Respondents themselves. Thereby the Respondents called upon the Appellant to pay twice for the same units, one to the open access vendor (BREPL) and subsequently to the HESCOM as a supplemental claims which is arbitrary and illegal. The Appellant who has paid the supplemental claim under protest due to the threat of disconnection which is clear from his letter dated 01.04.2019 produced in this case. The Respondents have no right to impose the consumption charges twice to the same units used by the Appellant through open access for which already the Appellant has paid the power consumption charges due to the mistake of the Respondents.

22) The Respondents both in their written arguments as well as in their parawise remarks specifically contended that the demand made by the HESCOM is based on the audit short claim, accordingly the

Respondents under Regulation 29.03 of COS passed an order of audit short claims and directed the Appellant to pay Rs. 53,34,179/-. Before considering this contention, I would like to refer the observation made by the Auditor in his letter dated 14.09.2018 regarding the installation bearing RR No. HTS 106 which reads as under:

HTS-106/HT2C(i) / JNMC College

ಸದರಿ ಸ್ಥಾವರದ ಗ್ರಾಹಕರಿಗೆ ಮೇ–2018 ರಿಂದ Wheeling unit ಆದರಿಸಿ ಬಿಲ್ಲನ್ನು ಮಾಡಲಾಗಿದೆ. ಸದರಿ ಸ್ಥಾವರದಲ್ಲಿ ವಾಣಿಜ್ಯ ಬಳಕೆ ಹಾಗು ಹಾಸ್ಟೇಲ್ ಬಳಕೆಗೆ ಸಂಬಂಧಿಸಿದಂತೆ Sub meter ಗಳು ಇರುತ್ತವೆ. ಆದ ಕಾರಣ ವಾಣಿಜ್ಯ ಬಳಕೆಯ ಯುನಿಟ್‌ಗಳಿಗೆ Wheeling unit ಆದರಿಸಿ ಬಿಲ್ಲನ್ನು ಮಾಡಲು Tariff Order ಪ್ರಕಾರ ಅವಕಾಶವಿರುವುದಿಲ್ಲ ಹಾಗೂ ಕಂಪನಿಗೆ ಆರ್ಥಿಕ ನಷ್ಟ ಉಂಟಾಗುತ್ತದೆ ಇದರಿಂದ ಮುಂದಿನ ದಿನಗಳಲ್ಲಿ ವಾಣಿಜ್ಯ ಬಳಕೆಗೆ ಉಪಯೋಗಿಸುವ ಯುನಿಟ್‌ಗಳಿಗೆ ಜಕಾತಿಯ ಪ್ರಕಾರ ಬಿಲ್ಲನ್ನು ಮಾಡಿ ಗ್ರಾಹಕರಿಂದ ವಸೂಲಾತಿ ಮಾಡಲು ತಿಳಿಸಲಾಗಿದೆ ಹಾಗು ಈ ಕುರಿತು ಪರಿಶೀಲಿಸಿ ಕ್ರಮ ಕೈಗೊಳ್ಳುವುದು.

On plain reading of the audit observation makes it clear that there is an incorrect billing raised by the HESCOM from May 2018 based on wheeling units, however the power was used by the Appellant to the installations serviced for commercial purpose and hostels for which sub meters were fixed. The tariff order does not permits to raise the bills in respect of the units used for commercial purpose by using the tariff of wheeling units, which are tariffed under HT 2 (c) (1), such a billing will cause financial loss to the

distribution company, therefore in future for the units used for commercial purpose as per the tariff order separate bills be raised and power consumption charges be collected from the consumer. Accordingly, suitable action may be taken in this regard.

23) On plain reading of Regulation 29.03 which deals with supplemental claims/short claims, for preferring the supplemental claims, the Distributing Licensee company shall serve a provisional assessment order with 15 days notice to the consumer to file his objections, if any, against the provisional assessment order on account of faulty meter or short claims caused due to erroneous billing. The case of the Appellant does not falls under either of faulty meter or short claims caused due to erroneous billing, such is the case the very passing of the short claims order by the Respondents is contrary to the above said regulation. The Respondents/ESCOMS shall be always consumer friendly, their actions against the consumers shall be free from mal practices. The audit party noticing the fact that the Appellant already paid the power consumption charges as per the bills raised by the Respondents to the BREPL, according to the wheeling and banking agreement, rightly observed that in future separate bills be raised in respect of LT 2 (b) and LT 3 sub meters, the power consumption

charges shall be directly paid to the HESCOM, the wheeling units should be restricted to installation HTS 106 only. The audit party never directed the HESCOM to raise the demand for the above said period as an audit short/supplemental claims under Regulation 29.03 of COS. In this case the Respondents instead of raising separate bills for consumption of power charges for commercial use on future date as observed by the audit party, illegally audit short claims were raised for the period from June 2018 to November 2018 for which already power consumption charges was paid by the Appellant to the BREPL as per the bills raised by the Respondents. The Respondents misread the audit observations and collected an amount of Rs. 53,34,179/- as a power consumption charges under the threat of disconnection which was paid by the Appellant under protest, the same is an arbitrary action of Respondents. The Respondents legally not entitled for the said amount, in view of the fact that already the power consumption charges was paid by the Appellant to the BREPL in respect of the wheeled units as per the demand raised by the Respondents. It is the Respondents who have allotted the open access units to the installation bearing RR No. HTS 106 and other sub meters, absolutely there is no role of the Appellant in allotment of wheeling

the units. If at all the Appellant was liable to use the wheeled units for the installation bearing RR No. HTS 106 the Respondents are duty bound to bring it to the notice of the Appellant at the first instant itself, thereby wheeled units would have been recorded restricting to the main meter HTS 106, however it is the Respondents who have allotted the open access units to be used by the Appellant for his installations HTS 106 and sub meters LT 2 (b) and LT 3, they did not raised any objections till audit party makes its observations in the audit report. The Appellant as per the bills raised by the Respondents for wheeled units allotted by the Respondents, paid the consumption charges to the BREPL which was well within the knowledge of the Respondents. It is the sheer negligence of the Respondents in not communicating the Appellant to use the wheeled units restricting to the main installation HTS 106 only, therefore the Respondents have no right to claim the power consumption charges on second time in the form of supplemental claims/audit short claims from the Appellant. The Respondents by raising the demand as a supplemental claims forced the Appellant to make a payment twice for the same units (totally 558718 units) once to the open access vendor BREPL and subsequently to HESCOM which is an arbitrary action so as to

enrich itself. Therefore, the Respondents are liable to refund the said amount to the Appellant with interest.

24) Though the Appellant before the CGRF sought for adjustment of the units consumed by the sub meters LT 2 (b) and LT 3 either to the HT installation bearing RR No. HTS 106 or RR No. HTS 46 in future monthly energy bills, the KERC (CGRF & O) Regulation 2004, does not empowers the CGRF in ordering the adjustment of the units in future monthly energy bills of other installation of the Appellant. However, the CGRF dismissed the complaint on the ground that the grievance of the Appellant wherever the SOP is not followed, the present case is of billing dispute, hearing of billing disputes is out of jurisdiction of CGRF. This finding of the CGRF is clearly erroneous, the same is legally untenable. Under section 2(g) of KERC (CGRF & O) Regulations 2004, expressly excludes the jurisdiction of the CGRF in the following circumstances:

a) *unauthorized use of electricity as provided under Section 126 of Act*

b) *offences and penalties as provided under Section 135 to 139 of the Act*

c) *accident in the distribution, supply or use of electricity as provided under Section 161 of the Act.*

The dispute in this case does not falls within the Clause (a) to (c) referred supra, therefore the finding of the CGRF that the case of

the Appellant falls under billing dispute, hence its jurisdiction has expressly excluded is erroneous and incorrect.

25) Even though the Appellant sought for adjustment of the units in future monthly energy bills of other installation, the adjustment of units is not empowered under the regulations, this authority is not debarred from passing an order for refund of amount which was illegally demanded by the Respondents. The amount which was deposited by the Appellant under protest due to the threat of disconnection by the Respondents needs to be refunded in the interest of justice and equity.

26) 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.

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

No. OMB/H/G-406/2020/D-1513 **Dated: 30-12-2020**

O R D E R

1) The appeal is allowed.
2) The order passed by the CGRF dated 29.06.2020 bearing order No. ಪ್ರಕರಣ ಸಂಖ್ಯೆ:20/2020, ಬೆ/ಗ್ರಾವೆ/ಅಇಂ(ವಿ)/ಉಲೆನಿ/ಹಿಸ–2/2020–21/2717–22, is set aside.

3) The Respondents/HESCOM are directed to refund Rs. 53,34,179/- deposited by the Appellant under protest within 2 months from the date of the receipt of this order with interest at the rate 5% from the date of deposit till refund.

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

1) The Principal,
Jawaharlal Nehru Medical College,
Nehru Nagar,
Belagavi – 590010.

2) Smt. Poonam Patil, Advocate,
1802, Embassy Habitat Apartment,
Vasanthnagar,
Bangalore – 560001.

3) The Assistant Executive Engineer (Elec.),
O&M City Sub Division-3, HESCOM
Neharu Nagar,
Belagavi – 590010.

4) Chairperson, Consumer Grievance Redressal Forum (CGRF)
Belgavi District,
Superintending Engineer (Ele),
O & M Circle, HESCOM,
Neharu Nagar,
Belagavi – 590010.

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.