

D-940

# BEFORE THE ELECTRICITY OMBUDSMAN

9/2, 6<sup>th</sup> Floor, Mahalakshmi Chambers, M.G Road, Bangalore – 560 001

**Present: B.N.Krishnaiah  
Electricity Ombudsman**

**Case No.OMB/H/G-277/2017**

**Dated : 15.09.2017**

Mallikarjuna Trust,  
R.S.No.106/B, Plot Nos.11 & 13,  
Vidyagiri, Bagalkot

... Appellant

**(By Ranganatha M.padamukhe, Authorised Representative)**

V/S

1. The Assistant Executive Engineer (EI),  
O & M, City sub-division,  
Sector No.25, Navanagar,  
Near SBI, Bagalkot

(Sri H.V.Devaraj, Advocate)

2. The Chairperson  
CGRF & Superintending Engineer,  
O & M Circle, HESCOM,  
Vidyagiri,  
Bagalkot – 587 102

... Respondents

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1. This is an appeal under clause 21.02 of KERC (CGRF & Ombudsman) Regulations, 2004 against the orders passed by CGRF, HESCOM, Bagalkot dated 20.01.2017.

2. The Appellant along with Jagadish Shivanagowda Goudar had come in appeal earlier before this Authority seeking relief. After hearing the matter was remanded to AEE, Bagalkot, for fresh enquiry and order. The AEE has made enquiry and passed order on 26.07.2016. Aggrieved by this the Appellant Trust, approached CGRF. The CGRF has upheld the proceedings of AEE dated 26.07.2016 and hence this appeal.

2. In the appeal, the appellant has contended as follows:

- (i) On perusal of para No.2 of the order dated 20.1.2017 of the CGRF reveal that, earlier the Superintending Engineer, Bagalkote, vide order dated 21.05.2011, ordered for supply under Clause 3.2.3 of KERC (Regulations) to the applicants who are all similarly situated as that of the appellant. Further, the AEE has also stated before the CGRF that though the earlier Section Officer has provided electrify supply to the applicants similarly situated as that of the appellant under Regulation 3.2.3 of KERC (Recovery of Expenditure Regulations), he would not provide electricity supply to the appellant. The Superintending Engineer in his order dated 21.05.2011 has indicated some of the sites, the said order is applicable to the remaining plots (such other layouts). The AEE has given power supply under Regulation 3.2.3 of KERC (Recovery of Expenditure) Regulations to persons of his choice, but has instructed the appellant to obtain power supply under Regulation 3.2.1.
- (ii) To consider their request under clause 3.2.3 of KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004 since the

site in question is an abandoned one as stated by the AEE earlier before the Ombudsman;

- (iii) The Superintending Engineer, Bagalkot, vide order dated 21.05.2011 has permitted to give power for such abandoned sites by collecting supply charges;
- (iv) Even in Veerapura village including the owner of the land the Licensee Authorities have given power under Clause 3.2.3 of KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004.

3. The learned Advocate for the respondent has filed the written submissions which is as follows:

- (i) The appellant is the owner of site Nos.11 and 13, Veerapura village in R.S.106/B, which comes within the jurisdiction of Bagalkot City Municipality. The appellant obtained temporary electricity connection before putting up construction, and after completion of construction applied for permanent electricity connection with relevant documents. The application was rejected by the AEE on the ground that electricity connection has to be obtained under KERC (Recovery of Expenditure) Regulations.
- (ii) Survey number 106/B belongs to one Jagadish Shivanagowda Goudar and he has formed a layout. Jagadish Shvainagouda Goudar has submitted an application seeking power supply to the plots bearing Nos.17 and 18. The appellant Trust is a tenant under Jagadish Shivanagowda Goudar. Jagadish Shivanagowda Goudar is one of the Trustees. The Trust has submitted an application for power supply to the plot bearing Nos.11 and 13 which have been

carved in the land in survey number 106/B. The respondent while considering the aforesaid applications, intimated to the appellant and also to Jagadish Shivanagowda Goudar to avail power supply under self-execution scheme as provided under Regulation 3.2.1 of (Recovery of Expenditure for Supply of Electricity) Regulations, 2004, since the application by Jagadish Shivanagowda Goudar who is the Developer of the layout and therefore, the layout does not fall under Abandoned layout;

- (iii) The appellant Trust and Jagadish Shivanagowda Goudar have approached the CGRF in two separate complaints and the CGRF clubbed both the cases and passed a common order dated 27.08.2015 that the appellant and Jagadish Shivanagowda Goudar have to avail power supply under self-execution as per Section 3.2.1 of KERC (Recovery of Expenditure for Supply of Electricity Regulation 2, 2004, and dismissed both the complaints;
- (iv) The appellant and aforesaid Jagadish Shivanagowdar Goudar filed appeals before the Ombudsman. After hearing arguing the arguments and considering the Regulations 3.2, 3.2.1, 3.2.3, 3.2.3 and 3.2.4 has set aside the order dated 27.08.2015 passed by the CGRF and remitted back the matter to the AEE to examine afresh and to pass an order in accordance with law after giving an opportunity of hearing to the Appellant thereon;
- (v) The AEE after providing ample opportunity to the appellant Trust and Jagadish Shivanagowda Goudar has passed detailed order after considering all the objections, intimated to the appellant Trust and Jagadish Shivanagowda Goudar, who is also a Trustee of

the Appellant Trust and also the Developer of the layout in survey number 106/B. Thus the Developer is much available to develop the infrastructure of the Layout and therefore, the Layout in survey number 106/B does not fall under the abandoned Layout and therefore, the Appellant herein and the aforesaid Jagadish Shivanagowda Goudar, who is the Trustee of the Appellant herein have to avail power supply under Self execution Scheme as provided under Regulation 3.2.1 of KERC (Recovery of Expenditure for Supply of electricity) Regulations, 2004;

(vi) The aforesaid Jagadish Shivanaowda Goudar, though he is the Trustee of the Appellant Trust herein has not challenged the order of the respondent. However, the Appellant Trust under which the aforesaid Developer Shri Jagadish Shivanagowda Goudar has filed a complaint before the CGRF, the 2<sup>nd</sup> round litigation in Case No.3/2016. The CGRF considering the grounds urged by the appellant trust passed an order “the Appellant does not come within the abandoned Layout and therefore the Appellant has to avail Power Supply under Regulation 3.2.1 of KERC (Recovery of Expenditure of Supply of Electricity) Regulations, 2004;

(vii) The Appellant Trust has filed the above appeal contending that averment of the appellant that there is availment of power to various persons in survey number 102/1 of Veerapura village will not come to the rescue of the appellant, since the land in survey number 102/1 of Veerapura village, the layout was formed and wherein the various persons who had purchased sites and in the first instance, the purchaser approached seeking power supply and

therefore, the Layout has been treated as abandoned Layout in survey number 102/2;

- (viii) The list of installations serviced to the various persons and the Layout Plan, clearly demonstrate that the power supply is given in the names of purchasers of the sites in question. After providing power supply to the site owners, the land owner has also availed power supply and by that time the Layout was treated as abandoned layout and therefore, the same benefit cannot be made applicable to the case of the appellant herein, since the appellant is a Trust and the aforesaid Jagadish Shivanagowda Goudar is one of the Trustee of the appellant Trust and the Appellant Trust is not claiming the ownership of the property, and admittedly the Trust is a tenant under the aforesaid Jagadish Shivanagowda Goudar. Sri Jagadish Shivanagowda Goudar being the Developer of the Layout in survey number 106/B, has created the appellant Trust and therefore, the Developer is much available to develop the infrastructure. Hence the appellant has to avail power supply under Self Execution Scheme as provided under Regulation 3.2.1 of KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004. The appellant is not entitled any of the prayer in the appeal and the appeal is liable to be dismissed.

4 This Authority vide its order dated 21.03.2016 has allowed the appeal and remanded the matter to the AEE for fresh consideration. Thereafter, the AEE has conducted the proceedings 26.07.2016 and has held that the applicant Jagadisha Shivanagowda Goudar is much available. Hence, the Applicants (Jagadish Shivanagowda Goudar and Mallikarjuna Trust) have to

avail power supply under self-execution schedule under Regulation 3.2.1 of K.E.R.C (Recovery of Expenditure for Supply of Electricity) Regulations, 2004.

5. The case was remanded for a fresh consideration. The AEE has heard the matter and has ordered that the appellant should get the power connection as prescribed under Clause 3.2.1. In case of Veerapura Layout wherein the individual site owners were given power connection as prescribed under Clause 3.2.3 since it was declared as abandoned layout. In the instant case, on perusal of records and submissions made it is seen that, the developer Sri Jagadish Shivanagowdar Goudar is a Trustee of the Appellant Trust. Thus he is very much available. It all shows that he has not abandoned the layout. The contention of the appellant that there is avilment of power by the purchasers in survey number 102/1 of Veerapura village is also examined. It is seen from the records that the site purchasers have approached the Licensee for power supply separately and Licensee has considered it as an abandoned layout.

6. The submissions made by both the parties considered. The appellant Trust is tenant under Sri Jagadish Shivanagowdar Goudar – developer of layout. It shows that the developer is much available to develop infrastructure as required under Clause 3.2.1 of KERC (Recovery of Expenditure for Supply of electricity) Regulations, 2004. Thus the order passed by the CGRF appear to be in order. Hence the appeal is dismissed.

Sd/-  
**(B.N.Krishnaiah)**  
**Electricity Ombudsman**

To:

1. Sri Ranganath M.padamukhe, Sector number 10, Plot No.6, Model-C, Navanagar, Bagalkot – 587 103
2. The Assistant Executive Engineer (EI), O & M, City sub-division, HESCOM, Sector No.25, Navanagar, near SBI, Bagalkot.
3. The Chairperson, CGRF & Superintending Engineer, O & M Circle, HESCOM, Vidyagiri, Bagalkot – 587 102
4. Managing Directors of ESCOMs.
5. PS to Hon. Chairman, KERC
6. PS to Hon. Member (A), KERC
7. PS to Hon. Member (M), KERC
8. Secretary, KERC

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