

D-941
BEFORE THE ELECTRICITY OMBUDSMAN

9/2, 6th Floor, Mahalakshmi Chambers, M.G Road, Bengaluru – 560 001

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

Case No.OMB/M/G-283/2017

Dated 22.09.2017

Between :

Indus tower Limited,
No.12, Tower-D, Subramanya Arcade,
7th Floor, Bannerghatta Road,
Bengaluru – 560029

... Appellant

(By M/s.Kochhar & Co., Advocates)

1. The Assistant Executive Engineer,
O & M sub-division, MESCOM
Sorab sub-division, Sorab,
Shivamogga District.

2. The Chairperson, CGRF,
Dharwar District, HESCOM,
Office of the Superintending Engineer,
O&M Circle, Shivamogga

... Respondents

(R-1 by Sri H.V.Devaraj, Advocate).

1. The above said appeal is filed under clause 21.02 of KERC (CGRF & Ombudsman) Regulations, 2004 against the orders dated 05.04.2107 passed by CGRF, Shivamogga.

2. Comments were called vide letter dated 05.05.2017 from the respondent AEE. He has submitted the reply on 17.05.2017.

3. The case of the appellants is as follows :

- (i) The appellant is a company, having its registered office at No.12, Tower-D, Subramanya Arcade, 7th Floor, Bannerghatta Road, Bengaluru. The appellant is the largest telecom owner company in India and is engaged in the business of providing infrastructure for mobile telecommunication services across India;
- (ii) The appellant filed a complaint bearing number 3 of 2017 challenging the notice dated 01.12.2016 issued by the AEE demanding payment of arrears of electricity charges purportedly due from November 2010 to October 2016;
- (iii) The appellant availed power connection from the respondent AEE to its mobile tower bearing number S-5667 situated in Sorab Taluk, Shimoga District and the respondent AEE sanctioned power of 8 KW capacity vide letter dated 26.07.2004;
- (iv) At the request of the appellant Company additional power was sanctioned vide letters dated 28.10.2009 and 10.08.2010;
- (v) Respondent No.1 issued a letter dated 01.12.2016 demanding payment of arrears of electricity charges purportedly due from November 2010 to October 2016. In the Notice, the respondent AEE contended that the bills raised for previous years was based on wrong calculation after considering the connection under the

category 1 instead of 10. It is also been contended that AEE realized the mistake subsequent to the inspection undertaken by its officers. Based on the said inspection report, the AEE issued Notice to the appellant demanding Rs.49,95,066.00 allegedly said to be due between November 2010 to October 2016;

- (vi) The appellant issued a reply dated 20.12.2016 refuting the baseless assertions of the AEE and also requested to withdraw the demand;
- (vii) The respondent issued letter dated 21.12.2016 and 02.01.2017 threatening disconnection of electricity if the appellant fails to pay the amount;
- (viii) As per the Indian Electricity Act, 2003 and the regulations of the Electricity Code, 2004, the respondent cannot demand payment of any amounts if the same is not claimed and is due beyond two years;
- (ix) As per Section 56(2) of the Electricity Act, the respondent cannot demand payment of the amount if the same is not claimed within two years from the date it falls due;
- (x) The appellant paid Rs.5,00,000.00 under protest by way of electronic transfer. Without giving any notice to the appellant the respondent disconnected the power supply on January 19,2017 in violation of the provisions of the Electricity Act, 2003. The appellant again paid Rs.11,65,022.00 and further requested to reconnect the power supply to the mobile tower. The power connection was restored;

4. The respondent has submitted the reply as follows :

೧) ಸ್ಥಾವರ ಸಂಖ್ಯೆ ಎಸ್-5667ನೇದಕ್ಕೆ ದಿನಾಂಕ 28.08.2004 ರಲ್ಲಿ ಮೆ: ಭಾರತಿ ಏರ್‌ಟೆಲ್ ಲಿಮಿಟೆಡ್, ಚಾಮರಾಜಪೇಟೆ, ಸೊರಬ ಇವರ ಹೆಸರಲ್ಲಿ 7.5 ಕಿ.ವ್ಯಾ ವಿದ್ಯುತ್ ಮಂಜೂರಾತಿಯಾಗಿರುತ್ತದೆ. ಈ ಸಂದರ್ಭದಲ್ಲಿ ಸ್ಥಾವರದ ಗುಣಾಂಕ 01 ಎಂದು ನಿಗದಿಪಡಿಸಿ ಗಣಾಂಕ 01 ರಲ್ಲಿಯೇ ಬಿಲ್ಲು ಆಗುತ್ತಿರುತ್ತದೆ;

೨) ನಂತರದಲ್ಲಿ ಸ.ಕ.ನಿ.ಇಂ (ವಿ) ರವರ ಕಛೇರಿ ಆದೇಶ ಸಂಖ್ಯೆ 3049-51 ದಿನಾಂಕ 28.10.2009 ರಲ್ಲಿ ಅದೇ ಆರ್.ಆರ್.ನಂ.ಎಸ್-5667 ಕ್ಕೆ ಹೆಚ್ಚುವರಿಯಾಗಿ ಮತ್ತೆ 7 ಕಿ.ವ್ಯಾ ವಿದ್ಯುತ್ ಮಂಜೂರು ಮಾಡಿ ಒಟ್ಟು 15 ಕಿ.ವ್ಯಾಗೆ ವಿದ್ಯುತ್ ಮಂಜೂರಾಗಿದ್ದು, ಹಾಲಿ ಇರವು ಮೀಟರ್‌ನಲ್ಲಿಯೇ ವಿದ್ಯುತ್ ಸಮರ್ಪಕ ಕಲ್ಪಿಸಲಾಗಿರುತ್ತದೆ;

೩) ಪುನಃ ಸ.ಕಾ.ನಿ. ಇಂ(ವಿ)ಸೊರಬ ಕಛೇರಿ ಆದೇಶ ಸಂಖ್ಯೆ-1855-57 ದಿನಾಂಕ 10.08.2010 ರಲ್ಲಿ 24 ಕಿ.ವ್ಯಾ ಹೆಚ್ಚುವರಿ ಲೋಡ್ ಮಂಜೂರು ಮಾಡಿ ಒಟ್ಟು 39 ಕಿ.ವ್ಯಾ ವಿದ್ಯುತ್ ಮಂಜೂರು ನೀಡಲಾಗಿರುತ್ತದೆ. ಈ ಸಂದರ್ಭದಲ್ಲಿ 50/5ಆಂಪ್ಸ್ ಸಿ.ಟಿ ಅಳವಡಿಸಿ ಸ್ಥಾವರಕ್ಕೆ ಹಾಲಿ ಇರುವ ಮೀಟರ್‌ನಲ್ಲಿಯೇ ವಿದ್ಯುತ್ ಸಂಪರ್ಕ ಕಲ್ಪಿಸಲಾಗಿರುತ್ತದೆ.

೪) ಸಹಾಯಕ ನಿರ್ವಾಹಕ ಇಂಜಿನಿಯರ್ (ವಿ), ಎಲ್.ಟಿ.ರೇಟಿಂಗ್ ಉಪವಿಭಾಗ, ಮವಿಸಕಂ, ಸಾಗರ ರವರು ದಿನಾಂಕ 13.10.2010 ರಂದು ಸ್ಥಾವರದ, ಪಿ.ಸಿ. ಟೆಸ್ಟ್ ಮಾಡಿ ಈ ಕೆಳಕಂಡಂತೆ ವರದಿ ನೀಡಿರುತ್ತಾರೆ.

ಮೀಟರ್	ಸಿ.ಟಿ	ರೀಡಿಂಗ್	ಗುಣಾಂಕ
3 Ph (5-20A)	50/5	60157	K-10

ಅಂದರೆ ಸ್ಥಾವರದ ಗುಣಾಂಕ 10 ಆಗಿರುತ್ತದೆ.

- ೫) ನಂತರದಲ್ಲಿ ಈ ವರದಿಯ ಆಧಾರದ ಮೇರೆಗೆ ಸ್ಥಾವರದ ಗುಣಾಂಕ 10 ಎಂದು ಗಣಕಯಂತ್ರದಲ್ಲಿ ನಮೂದಿಸುವುದು ಬಿಟ್ಟು ಹೋದ ಪರಿಣಾಮ ಗ್ರಾಹಕರಿಗೆ ಈ ಮೊದಲು ಇದ್ದಂತಹ ಗುಣಾಂಕ 01 ರಲ್ಲಿಯೇ ಬಿಲ್ಲನ್ನು ನೀಡಲಾಗಿರುತ್ತದೆ. ಅಂದರೆ ಉದಾಹರಣೆಗೆ 10 ಯೂನಿಟ್ ಗ್ರಾಹಕರು ವಿದ್ಯುಚ್ಛಕ್ತಿ ಉಪಹೋಗಿಸಿ ಕೇವಲ 1 ಯೂನಿಟ್‌ಗಳಿಗೆ ಮಾತ್ರ ಬಿಲ್ಲು ಮಾಡಲಾಗಿರುತ್ತದೆ. ಉಳಿದ 9 ಯೂನಿಟ್‌ಗಳಿಗೆ ಬಿಲ್ಲು ಆಗಿರುವುದಿಲ್ಲ. ಇದು ನವೆಂಬರ್ 2010 ರಿಂದ ಅಕ್ಟೋಬರ್ 2016 ರವರೆಗೆ ಅಂದರೆ ಸುಮಾರು 72 ತಿಂಗಳುಗಳ ಕಾಲ ಈ ರೀತಿ ಗುಣಾಂಕ ಬಿಟ್ಟು ಬಿಲ್ಲನ್ನು ನೀಡಲಾಗಿರುತ್ತದೆ.
- ೬) ಈ ಕಛೇರಿ ಪತ್ರ ದಿನಾಂಕ 01.12.2016 ರಲ್ಲಿ ಗ್ರಾಹಕರಿಗೆ ಸ್ಥಾವರ ಸಂಖ್ಯೆ ಎಸ್-5667 ಕ್ಕೆ ಹೆಚ್ಚುವರಿ ಮಂಜೂರಾತಿ ಪಡೆದ ದಿನಾಂಕದಿಂದ ಗುಣಾಂಕ 10 ರಲ್ಲಿ ಬಿಲ್ಲು ಆಗದೆ ಇರುವ ಬಗ್ಗೆ ಕಾಲಕಾಲಕ್ಕೆ ಅನ್ವಯವಾಗುವ ಇಂಧನ ಹೊಂದಾಣಿಕೆ ವೆಚ್ಚ (FEC) ಹಾಗೂ ವಿದ್ಯುತ್ ತೆರಿಗೆ (TAX) ಗೆ ಬೇಡಿಕೆ ಮಾಡಲು ಸಂಬಂಧಪಟ್ಟ ಸುತ್ತೋಲೆ ಪತ್ರಗಳು ದಿನಾಂಕ 01.12.2016 ರಂದು ಲಭ್ಯವಾಗದ ಕಾರಣ ಸದರಿ ಸ್ಥಾವರಕ್ಕೆ ಇಂಧನ ಹೊಂದಾಣಿಕೆ ವೆಚ್ಚ (FEC) ಹಾಗೂ ವಿದ್ಯುತ್ ತೆರಿಗೆ (TAX) ಹೊರತಿಪಡಿಸಿ ಆಯಾ ಅವಧಿಗೆ ಅನ್ವಯವಾಗುವ ವಿದ್ಯುತ್ ದರಕ್ಕೆ ಬಿಟ್ಟು ಹೋದ ಯೂನಿಟ್‌ಗಳಿಗೆ ಬೇಡಿಕೆ ಮೊತ್ತ ರೂ.49,95,066/- ಪಾವತಿಸುವಂತೆ ಪರಿಷ್ಕೃತ ಬಿಲ್ಲನ್ನು ನೀಡಲಾಗಿರುತ್ತದೆ.
- ೭) ಈ ಬಗ್ಗೆ ಗ್ರಾಹಕರು ದಿನಾಂಕ 20.12.2016 ರಂದು ಈ ಕಛೇರಿಗೆ ಪತ್ರ ಬರೆದಿದ್ದು ಸದರಿಯವರು 02 ವರ್ಷಗಳ ಅವಧಿವರೆಗಿನ ಬೇಡಿಕೆ ಮಾತ್ರ ಪಾವತಿಸುತ್ತೇವೆ, ಉಳಿದ ಮೊತ್ತವನ್ನು ಹಿಂಪಡೆಯುವಂತೆ ಕೋರಿರುತ್ತಾರೆ.
- ೮) ಸದರಿ ಗ್ರಾಹಕರ ಪತ್ರಕ್ಕೆ ಅನುಗುಣವಾಗಿ ಈ ಕಛೇರಿ ಪತ್ರ ದಿನಾಂಕ 02.01.2017ರನ್ವಯ ಅನುಬಂಧ 2 ರಲ್ಲಿ ಈ ಕಛೇರಿಯಿಂದ ಹಿಂಬರಹವಾಗಿ ಕಂಪನಿಯ ನಿಯಮಾನುಸಾರ ಬೇಡಿಕೆ ಮಾಡಿರುವ ಮೊತ್ತ ತಾವು ತಮ್ಮ ಸ್ಥಾವರಕ್ಕೆ ಉಪಯೋಗಿಸಿದ ಯೂನಿಟ್‌ಗಳಿಗೆ ಬೇಡಿಕೆ ಮಾಡಿರುವುದಾಗಿರುತ್ತದೆ ಹಾಗೂ ಮಾಪಕದಲ್ಲಿ ದಾಖಲಿತ ಬೇಡಿಕೆಯದಾಗಿರುತ್ತದೆ. ಕಣ್ಣಿಟ್ಟಿಂದಾಗಿ ಗುಣಾಂಕ 10 ರ ಬದಲಾಗಿ ಗುಣಾಂಕ 01 ಎಂದು ತಪ್ಪು ಬೇಡಿಕೆ ಮಾಡಿರುವುದರಿಂದ ಸದರಿ ಅವಧಿಯಲ್ಲಿ ಆದಂತಹ ತಪ್ಪು ಬಿಲ್ಲನ್ನು ಸರಿಯಾದ ಗುಣಾಂಕಕ್ಕೆ ಬೇಡಿಕೆ ಮಾಡಿ ಆಯಾ ಅವಧಿಗೆ ಅನ್ವಯವಾಗುವ ವಿದ್ಯುತ್ ದರಕ್ಕೆ ಪರಿಷ್ಕೃತ ಬಿಲ್ಲನ್ನು

ನೀಡಲಾಗಿರುತ್ತದೆ ಹಾಗೂ ಈ ಅವಧಿಗೆ ಯಾವುದೇ ದಂಡ ಅಥವಾ ಬಡ್ಡಿಯನ್ನು ಸಹಾ ಬೇಡಿಕೆ ಮಾಡಿರದ ಕಾರಣ ಈ ಬೇಡಿಕೆ ಮೊತ್ತವನ್ನು ಹಿಂಪಡೆಯಲು ಅವಕಾಶವಿರುವುದಿಲ್ಲ ಎಂಬ ಮಾಹಿತಿಯನ್ನು ಗ್ರಾಹಕರ ಗಮನಕ್ಕೆ ತರುತ್ತಾ S-5667 ಸ್ಥಾವರಕ್ಕೆ ಬೇಡಿಕೆ ಮಾಡಿರುವ ರೂ.49,95,066/- ನ್ನು ಪಾವತಿಸಲು ಬಾಧ್ಯಸ್ಥರಾಗಿರುತ್ತೀರಿ ಎಂಬ ಮಾಹಿತಿಯನ್ನು ಗ್ರಾಹಕರ ಗಮನಕ್ಕೆ ತರಲಾಗಿರುತ್ತದೆ. ಸದರಿ ಬೇಡಿಕೆ ಮೊತ್ತವನ್ನು ಪಾವತಿಸದಿದ್ದಲ್ಲಿ ಕಂಪನಿಯ ನಿಯಮಾನುಸಾರ ಸ್ಥಾವರದ ವಿದ್ಯುತ್ ನಿಲುಗಡೆಗೊಳಿಸಲಾಗುವುದು ಎಂಬುದರ ಬಗ್ಗೆ ಗ್ರಾಹಕರಿಗೆ ಮಾಹಿತಿ ನೀಡಲಾಗಿರುತ್ತದೆ.

೯) ಈ ಬಗ್ಗೆ ಗ್ರಾಹಕರು ದಿನಾಂಕ 10.01.2017 ರಲ್ಲಿ ರೂ.5,00,000 ವನ್ನು ಈ ಕಛೇರಿಗೆ ಪಾವತಿಸಿರುತ್ತಾರೆ. ಉಳಿದ ಬಾಕಿ ಮೊತ್ತವನ್ನು ಪಾವತಿಸಿರುವುದಿಲ್ಲ.

೧೦) ನಂತರದಲ್ಲಿ ಗ್ರಾಹಕರಿಗೆ 15 ದಿನಗಳ ಅವಧಿಯ ಸೂಚನಾ ಪತ್ರದನ್ವಯ 15 ದಿನಗಳ ಗಡುವು ಮುಗಿದ ಕಾರಣ ದಿನಾಂಕ 19.01.2017 ರಲ್ಲಿ ಸಮಯ 11.30 ಬೆಳಿಗ್ಗೆ ಸದರಿ ಸ್ಥಾವರದ ವಿದ್ಯುತ್ ಅನ್ನು ನಿಲುಗಡೆಗೊಳಿಸಲಾಗಿರುತ್ತದೆ. ಅದೇ ದಿನ ಗ್ರಾಹಕರು ದೂರವಾಣಿ ಮುಖೇನ ಹಾಗೂ ಪತ್ರ ಮುಖೇನ ಅಲ್ಪ ಮೊತ್ತ ಅಂದರೆ ರೂ.11,65,023/- ಅನ್ನು ಪಾವತಿಸುವುದಾಗಿ ತಿಳಿಸಿ ವಿದ್ಯುತ್ ಸಂಪರ್ಕ ನೀಡುವಂತೆ ಕೋರಿದ ಮೇರೆಗೆ ಅದೇ ದಿನ ಸ್ಥಾವರಕ್ಕೆ ಮರು ವಿದ್ಯುತ್ ಸಂಪರ್ಕ ಕಲ್ಪಿಸಲಾಗಿರುತ್ತದೆ.

೧೧) ಕಾಲಕಾಲಕ್ಕೆ ಅನ್ವಯವಾಗುವ ಇಂಧನ ಹೊಂದಾಣಿಕೆ ವೆಚ್ಚ (FEC) ಹಾಗೂ ವಿದ್ಯುತ್ ತೆರಿಗೆ (Tax) ಗೆ ಬೇಡಿಕೆ ಮಾಡಲು ಸಂಬಂಧಪಟ್ಟ ಸುತ್ತೋಲೆ ಪತ್ರಗಳು ಲಭ್ಯವಾದ ಕಾರಣ ಅನುಬಂಧ-2 ರಲ್ಲಿ ತಿಳಿಸಿದ ಬಿಲ್ಲಿನ ಮೊತ್ತವನ್ನು ಪರಿಷ್ಕರಿಸಿ Energy Charges ಮೊತ್ತ ರೂ.49,95,066/- ವಿದ್ಯುತ್ ತೆರಿಗೆ (Tax) ರೂ.2,80,979/- ಹಾಗೂ ಇಂಧನ ಹೊಂದಾಣಿಕೆ ವೆಚ್ಚ (FEC) ರೂ.5,989/- ಸೇರಿ ಒಟ್ಟು ಬೇಡಿಕೆ ಮೊತ್ತ ರೂ.52,82,034/- ಗಳಿಗೆ ಪತ್ರ ದಿನಾಂಕ 23.01.2017 ರಲ್ಲಿ ಗ್ರಾಹಕರಿಗೆ ಮಾಹಿತಿ ನೀಡಲಾಗಿರುತ್ತದೆ. ಈ ಮೊತ್ತದಲ್ಲಿ ಗ್ರಾಹಕರು ಈಗಾಗಲೇ ದಿನಾಂಕ 10.01.2017 ರಲ್ಲಿ ರೂ.5,00,000/- ಹಾಗೂ ದಿನಾಂಕ 21.01.2017 ರಲ್ಲಿ ರೂ.11,65,023/- ಒಟ್ಟು ರೂ.16,65,023/- ಪಾವತಿಸಿದ್ದು, ಇನ್ನುಳಿದ ಮೊತ್ತ ರೂ.36,17,011/- ನ್ನು ಗ್ರಾಹಕರು ಪಾವತಿಸಲು ಬಾಕಿ ಇರುತ್ತದೆ.

೧೨) ಗ್ರಾಹಕರು ತಮ್ಮ ಸ್ಥಾವರಕ್ಕೆ ಬೇಡಿಕೆ ಮಾಡಿದ ಮೊತ್ತದಲ್ಲಿ ಕೇವಲ 2 ವರ್ಷ ಅವಧಿವರೆಗಿನ ಮೊತ್ತವನ್ನು ಮಾತ್ರ ಪಾವತಿ ಮಾಡುತ್ತೇವೆ ಎಂದು ಪತ್ರ ಮುಖೇನ ತಿಳಿಸಿದ್ದು, ಈ ಬಗ್ಗೆ ಕಂಪನಿಯ ನಿಯಮಾನುಸಾರ “ಕಂಡಿಷನ್ಸ್ ಆಫ್ ಸಪ್ಲೈ ಎಲೆಕ್ಟ್ರಿಸಿಟಿ ಆಫ್ ಡಿಸ್ಟ್ರಿಬ್ಯೂಷನ್ ಲೈಸೆನ್ಸಿ ಇನ್ ದಿ ಸ್ಟೇಟ್ ಆಫ್ ಕರ್ನಾಟಕದ ಷರತ್ತು ೨೯.೦೮(a) ರ ನಿಯಮದಲ್ಲಿ “ವಿದ್ಯುತ್ ಸರಬರಾಜು ಮಾಡಿದ್ದಕ್ಕಾಗಿ ವಸೂಲಾಗಬೇಕಾದ ವಿದ್ಯುತ್ ಬಳಕೆ ಶುಲ್ಕದ ಬಾಕಿ ಎಂದು ಬಿಲ್ಲಿನಲ್ಲಿ ನಿರಂತರವಾಗಿ ತೋರಿಸಿಕೊಂಡು ಬರದ ಹೊರತು, ಅಂತಹ ಮೊಬಲಗು ಬಾಕಿ ಎಂದು ಮೊದಲ ಬಾರಿಗೆ ಕ್ಲೇಮು ಮಾಡಲ್ಪಟ್ಟ ದಿನಾಂಕದಿಂದ ಎರಡು ವರ್ಷಗಳ ನಂತರ ಲೈಸೆನ್ಸಿದಾರರು ಅಂತಹ ಯಾವುದೇ ಬಾಕಿಯನ್ನು ವಸೂಲು ಮಾಡತಕ್ಕದ್ದಲ್ಲ ಎಂದು ನಿಯಮವಿದ್ದು, ಆದರೆ ಬಿಲ್ಲನ್ನು ಡಿಮ್ಯಾಂಡ್ ಮಾಡಿದ ನಂತರ ಬಿಲ್ಲಿನಲ್ಲಿ 2 ವರ್ಷಗಳವರೆಗೆ ತೋರಿಸದೇ ಇದ್ದಲ್ಲಿ ಈ ನಿಯಮವು ಅನ್ವಯಿಸುತ್ತದೆ. ಆದರೆ ಸದರಿ ಪ್ರಕರಣದಲ್ಲಿ ಗುಣಾಂಕ 10 ಬಿಟ್ಟು ಹೋದ ಬಗ್ಗೆ ಬಿಲ್ಲನ್ನು ದಿನಾಂಕ 01.12.2016 ರಲ್ಲಿ ಬೇಡಿಕೆ ಮಾಡಿದ್ದು, ಆ ನಂತರ ನಿಯಮಿತವಾಗಿ ಬಾಕಿಯನ್ನು ಬಿಲ್ಲಿನಲ್ಲಿ ತೋರಿಸಿ ಗ್ರಾಹಕರಿಗೆ ವಿತರಿಸಲಾಗಿರುತ್ತದೆ. ಆದ್ದರಿಂದ ಈ ಪ್ರಕರಣದಲ್ಲಿ ಕಂಡಿಷನ್ಸ್ ಆಫ್ ಸಪ್ಲೈ ಎಲೆಕ್ಟ್ರಿಸಿಟಿ ಆಫ್ ಡಿಸ್ಟ್ರಿಬ್ಯೂಷನ್ ಲೈಸೆನ್ಸಿ ಇನ್ ದಿ ಸ್ಟೇಟ್ ಆಫ್ ಕರ್ನಾಟಕದ ಷರತ್ತು 29.08(a) ಅನ್ವಯವಾಗದೇ ಷರತ್ತು 29.03 ಅನ್ವಯವಾಗುತ್ತದೆ. ಅನುಬಂಧ-06 ರಲ್ಲಿ ತಿಳಿಸಿರುವಂತೆ ಪಾವತಿಸಲು ಕೋರಿದ ಕಡಿಮೆ ಬೇಡಿಕೆ ರೂ.52,82,034/- ಮೊತ್ತವು 2 ವರ್ಷಗಳ ಹಿಂದಿನ ಅವಧಿಯಲ್ಲಿ ಬೇಡಿಕೆ ಮಾಡಿ, ನಿರಂತರವಾಗಿ ಬಿಲ್ಲಿನಲ್ಲಿ ತೋರಿಸದೇ ಇರುವ ಬಾಕಿಯಲ್ಲವಾದ್ದರಿಂದ ಕಡಿಮೆ ಬೇಡಿಕೆ ಮೊತ್ತ ರೂ.52,82,034/- ರಲ್ಲಿ ಈಗಾಗಲೇ ಪಾವತಿಸಿರುವ ಮೊತ್ತ ರೂ.16,65,023/- ನ್ನು ಹೊರತುಪಡಿಸಿ ಇನ್ನುಳಿದ ಬಾಕಿ ಮೊತ್ತ ರೂ.36,17,011/- ನ್ನು ಗ್ರಾಹಕರು ಪಾವತಿಸಲು ಬಾಧ್ಯಸ್ಥರಾಗಿರುತ್ತಾರೆ.

೧೩) ಮೇಲ್ಕನವಿದಾರರು ಮಾನ್ಯ Electricity Ombudsman ನಲ್ಲಿ Case No.OMB/B/G-205/2015 dated 22.04.2015 ರ ಪ್ರಕರಣವನ್ನು ಉಲ್ಲೇಖಿಸಿ ಸದರಿ ಆದೇಶದನ್ವಯ ಪರಿಹಾರ ಕೋರಿದ್ದು, ಇದು ದೋಷಪೂರಿತ ಮಾಪಕದ ಹಿಂಬಲ್ಲಿಗೆ ಸಂಬಂಧಿಸಿದ್ದು, ಪ್ರಕರಣವು “ಕಂಡಿಷನ್ಸ್ ಆಫ್ ಸಪ್ಲೈ ಎಲೆಕ್ಟ್ರಿಸಿಟಿ ಆಫ್ ಡಿಸ್ಟ್ರಿಬ್ಯೂಷನ್ ಲೈಸೆನ್ಸಿ ಇನ್ ದಿ ಸ್ಟೇಟ್ ಆಫ್ ಕರ್ನಾಟಕದ ಷರತ್ತು 27.03ರಲ್ಲಿ ಬರುತ್ತದೆ. ಆದರೆ ಬಿಲ್ಲು ಮಾಡಲು ಗುಣಾಂಕ ಬಿಟ್ಟು ಹೋಗಿರುವ ಮೇಲ್ಕನವಿದಾರರಿಗೆ ಸಂಬಂಧಿಸಿದ ಪ್ರಕರಣವು “ಕಂಡಿಷನ್ಸ್ ಆಫ್ ಸಪ್ಲೈ ಎಲೆಕ್ಟ್ರಿಸಿಟಿ ಆಫ್ ಡಿಸ್ಟ್ರಿಬ್ಯೂಷನ್ ಲೈಸೆನ್ಸಿ ಇನ್ ದಿ ಸ್ಟೇಟ್ ಆಫ್ ಕರ್ನಾಟಕದ

ಷರತ್ತು 27.03 ರಲ್ಲಿ ಬಾರದೇ ಷರತ್ತು 29.03 ರಲ್ಲಿ ಬರುವುದರಿಂದ ಮಾನ್ಯ Electricity Ombudsman ನಲ್ಲಿ ಇದೇ ರೀತಿಯ ಕೇಸಿನ/ಸಿ.ಟಿ. ಗುಣಾಂಕ ರಹಿತವಿಲ್ಲ ಆಗಿರುವ ಬಗ್ಗೆ ವಿಚಾರಣೆ ಈಗಾಗಲೇ ನಡೆದಿದ್ದು, Case No.OMB/B/G-182/2014/407 dated 08.09.2014 (M/s.Anriya Dwellington Apartment Assn. Dollors Colony Vs AEE O & M C-6 sub-dvn. BESCO, Mathikere, Bangalore) ಸಂಬಂಧಪಟ್ಟ ಕೇಸಿನ ವಿಚಾರಣೆಯು ಕೂಲಂಕಷವಾಗಿ ನಡೆದಿದ್ದು ಸದರಿ ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದ್ದ ಕೇಸಿನಂತೆಯೇ ಆಗಿರುತ್ತದೆ. ಅಂತಿಮ ಆದೇಶವಾಗಿ ಈ ಕೇಸಿನಲ್ಲಿಯೂ ಸಹ Respondent-2 ಅಂದರೆ AEE, O & M, C-6 sub-dvn, BESCO, Mathikere, ಅವರ ಪರವಾಗಿಯೇ ಆದೇಶ ಬಂದಿದ್ದು Appellant ರವರೇ ಬೇಡಿಕೆ ಮಾಡಿದಂತಹ ಮೊತ್ತವನ್ನು ಸಂಪೂರ್ಣವಾಗಿ ಪಾವತಿಸಲು ಭಾದ್ಯಸ್ಥರಾಗಿರುತ್ತಾರೆ ಎಂದು ಬಂದಿರುತ್ತದೆ.

೧೪) ಈ ಸಂಬಂಧ ಮೇಲ್ಮನವಿದಾರರು ವೇದಿಕೆಯಲ್ಲಿ ದೂರು ಸಲ್ಲಿಸಿದ್ದು, ಅರ್ಜಿದಾರರ ದೂರನ್ನು ವಜಾಗೊಳಿಸಿದೆ.

೧೫)ಎಸ್-5667ಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಪ್ರಕರಣವು ಸ್ಥಾವರದ ಗುಣಾಂಕ ಬಿಟ್ಟು ಹೋಗಿರುವ ಪ್ರಕರಣವಾಗಿದ್ದು, ಇದು “ಕಂಡಿಷನ್ಸ್ ಆಫ್ ಸಪ್ಲೈ ಎಲೆಕ್ಟ್ರಿಸಿಟಿ ಆಫ್ ಡಿಸ್ಟ್ರಿಬ್ಯೂಷನ್ ಲೈಸೆನ್ಸ್ ಇನ್ ದಿ ಸ್ಟೇಟ್ ಆಫ್ ಕರ್ನಾಟಕದ ಷರತ್ತು 29.03ರಲ್ಲಿ ಬರುತ್ತದೆ. ಸದರಿ ಷರತ್ತಿನ ಅನ್ವಯ ಸಿ.ಟಿ.ಗುಣಾಂಕ ಬಿಟ್ಟು ಹೋದ ಕುರಿತು ದಿನಾಂಕ:1.12.2016ರಲ್ಲಿ ಮೊದಲ ಬಾರಿಗೆ ಡಿಮ್ಯಾಂಡ್ ಮಾಡಿ ಕ್ಲೇಮ್ ಮಾಡಿ ತದನಂತರ ನಿರಂತರ ಮಾಹೆಯಾದ ಬಿಲ್ಲಿನಲ್ಲಿ ಸದರಿ ಬಾಕಿಯನ್ನು ತೋರಿಸಿ ಬಿಲ್ಲು ನೀಡಲಾಗುತ್ತಿರುವುದರಿಂದ ಮೇಲ್ಮನವಿದಾರರು ತಿಳಿಸಿದ ಷರತ್ತು 29.08 (ಎ) ಅನ್ವಯವಾಗುವುದಿಲ್ಲ.

5. In support of the case the appellant has submitted the following citations and has contended as follows :

(i) K.N.Anilkumar – vs – Assistant Executive Engineer.

One of the issues discussed is whether Section 56(2) of Indian Electricity Act, 2003 is applicable ?

“This particular section in the Indian Electricity Act, 2003, is a very important limitation clause for the welfare of the licensee and

protection of the consumer. The limitation make energize and vigilant the licensee to do their duty in time with due care. So, the assessment made after two years of the alleged period is not sustainable as per law.”

(ii) Shivala Bagh Bhaian Trust – vs – Punjab SEB;

(iii) State Consumer Disputes Redressal Commission, Punjab. Consumer complaint No.28 of 2008.

Authorities at fault. Meter of the plaintiff checked in 2007. Demand notice issued in 2007 claiming dues from 1997. This claim was not continuously recorded/billed. Section 56(2) applied and the Commission held that the authorities cannot claim for arrears which are not continuously billed beyond the time of 2 years.

“The logic behind 56(2) is simple that the consumer cannot be burdened by a huge amount claimed for a decade. If there was inaccuracy to record correct consumption the officers of the respondents were liable to check the meter off and on”

(iv) Classic Developers and Anr - vs – Bangalore Electricity Supply Company Limited & others reported in ILR 2012 Kar 1572;

Held that the non-obstantate clause in sub-section 2 of Section 56 makes it all mandatory for BESCO to have recovered the moneys due within the period of two years from the date when such became first due (para 24).

(v) CESC Ltd., - vs – Shiva Glass Co., Ltd (2011 SCC Online Cal 3860);

“This Section starts with a non-obstantate clause and the use of the word ‘shall’ in relation to disconnection of electricity is a

complete bar to disconnect such supply if such demands are not recoverable in terms of Section 56(2) of the said Act. The sub-section (2) of Section 56 is a new provision which did not find place in Section 24 of the Indian Electricity Act, 1910. This is a provision of limitation for recovery of the dues by the licensee or the generating company. This provision has over-riding effect and clearly prohibits a licensing authority to realize any amount after the period of two years from the date when such sum became first due, unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee 'shall not' disconnect the supply of electricity. The licensee can get rid of this limitation provided the said licensing company in the bills sent to the consumer has continuously shown the said arrears recoverable from him. If no such indication is there in the subsequent bills regarding the arrears recoverable from the consumer, then if two years period expires from the date when such sum became first due and would not be recoverable being barred by limitation”

- (vi) Awadesh S.Pandey – vs – Tata Power Co. Ltd., reported in AIR 2007 Bom 52;

This case was inclined on discussing more about 56(1). The question of disconnection of electricity was more in the picture. However, the Court upheld the decision of the Electricity Ombudsman.

“We then come to the next issue as to whether the demand made by respondent No.1 is contrary to the provisions of Section 56 of the Electricity Act. We have already narrated the facts. The Electricity Ombudsman by his order of 18th July, 2006 held that the

respondent No.1 is entitled to recover past dues by correcting multiplying factor. The question posed by the Electricity Ombudsman to itself was whether the recovery could be made for the entire period of 26 months i.e. for a period from October, 2003 to November, 2005 and that two belatedly in January 006. After considering the various provisions including the regulations, the Ombudsman held, only those charges for a period of two years previous to the demand could be recovered and that the arrears for the consumption in January 2004 became first due in February, 2004 as supplementary bill was raised in 2006 and these dues having been within two years are recoverable under the provisions of Section 56(2) of the Electricity Act.

- (vii) Order dated 22.04.2015 passed by the Ombudsman in Preusse India Pvt. Ltd., - vs – AEE 7 another;

The demand by the 1st respondent against the appellant is set aside as time barred under Section 56(2) of the Electricity Act, 2003.

- (viii) Balasinor Nagrik Co-operative Bank Ltd., - vs – Babubhai Shankerlal Pandya & others reported in (1987)1 SCC 606 (on interpretation of Statutes)

Interpretation of Statutes: The rule that a Statute must be read as a whole equally applies to a Section. Hence no part of a Section can be omitted for interpretation.

- (ix) Oriental Insurance Co, Ltd – vs – K.C.Subramanyam in MFA 2596/2007 dated 12.07.2012.

“The principle that the Statute must be read as a whole is equally applicable to different parts of the same section. The section must be construed as a whole or not one of the parts is a saving clause or a proviso. It is an elementary rule that construction of a Section is to be made of all the parts together. It is not permissible to omit any part of it. The whole Section should be read together”.

6. The Advocate for the respondent has relied upon the Judgements of the Hon’ble High Court in W.P.17225/2007 dated 05.11.2008 and also on the Judgement of the Hon’ble Jharkhand High Court reported in AIR 2016 Jharkhand 2q016 and also the Judgement of the Ombudsman in OMB/H/G-265/2006 and OMB/H/G-266/2016.

7. The Advocate for the respondent has filed the following submissions/events.

- (i) The sum and substance of this case is that the Respondent raised a demand dated 01.12.2016, based on the report dated 24.11.2016, submitted by the AEE, LT rating division notifying the Respondent, the bills were raised to the installation bearing RR No.85567 for the month of November 2010 to October 2016 instead of taking the constant as only K-01 and therefore the supply company issued a demand requiring the Appellant to pay the difference amount payable to the supply company as against the demand notice. The Appellant has filed its objections dated 20.12.2016, admitting their liabilities and however disputed to pay that the supply company has no right to raise the demand beyond two years;

- (ii) The supply Company considering the objections of the Appellant has passed a detailed order against which the Appellant has filed a complaint before the CGRF. The CGRF after holding enquiry has held by its order dated 05.04.2017 that the supply company has every right to recover the amount and has directed the Appellant herein to pay the difference amount from November 2010 to up-to date after deducting the amount already paid;
- (iii) The case of the Appellant is that he is not disputing as to the demand raised by the supply company only by taking Constant K-01, instant of Constant K-10, but however the Appellant has raised that under Section 56(2) of the electricity Act, 2013, the supply company has no right to claim the amount beyond two years and therefore for the purpose of appreciation of the dispute in the above, the Respondent submits that the Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka provides for adjustments of erroneous bills which reads as follows :
- “29.08. At any time during verification of the consumer’s account, if any short claims caused by erroneous billing are noticed, the Consumer is liable to pay the difference. The Licensee shall follow the procedure laid down under Clause 29.03 in such cases for preferring the supplemental claims. However, the Licensee shall not recover any arrears after a period of 2 years from the date when such sum became first due, unless such sum has been shown continuously in the bill as recoverable as arrears of the charges of electricity supplied. 56(2). Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer,*

under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity”.

- (iv) A conjoint reading of clause 29.08 of Conditions of Supply and Section 56(2) of the Indian Electricity Act, 2003, no sum due from any consumer under this section shall be recoverable after the period of two years from the date when such sum became first due and therefore the Hon'ble Ombudsman has to consider whether the date when such sum become first due. In the present case first due starts from the date of knowledge, i.e. on 24.11.2016 when the L.T. rating division submitted the report notifying to the respondent herein and therefore the respondent herein has raised a demand on 01.12.2016 and therefore in all the practical purpose the knowledge is the date such sum become first due;

8. On perusal of both the oral and written submissions made by both the parties the following issues emerge for consideration.

- a). It is seen that the AEE has raised the bill immediately on receipt of the report dated 24.11.2016 submitted by the AEE, LT rating division notifying the Respondent, the bills were raised to the installation bearing RR No.S 5567 for the month of November 2010 to October 2016 by taking the constant as only K-01 instead of K-10. The technical flaw erupted in reading of the meter had not come to notice of the AEE till 24.11.2016.

b). Immediately on receipt of the report from vigilance the AEE has issued notice and acted as per procedure laid down under Regulation 29.03. The consumer has not disputed regarding the consumption of power during the period in question. Thus, the action of the AEE in raising the bill appears to be in conformity with the observations made and orders passed by the Hon'ble High Court of Karnataka in W.P.17225/2007 pertaining to Ramanagar.

c). The relevant portion of the Judgement of the Hon'ble High Court of Karnataka in W.P.17225/2007 in Bangalore Electricity Supply Company – vs – Ghousia College of Engineering of Ramanagar states as follows : (para 12).

“12. Clause 29.08 (a) reads as hereunder :

“At any time during verification of the consumer's account, if any short claims caused by erroneous billing are noticed, the Consumer is liable to pay the difference. The Licensee shall follow the procedure laid down under Clause 29.03 in such cases for preferring the supplemental claims.

However, the Licensee shall not recover any arrears after a period of 2 years from the date when such sum became first due, unless such sum has been shown continuously in the bill as recoverable as arrears of the charges of electricity supplied.

In case of verification of the consumer's account, shows excess claims made in the past, the excess amount shall be credited to the consumer's account from the date of payment up to the date of credit. This shall be done within one month from the pointing out the excess claims. If for any reason there is delay in crediting the

amount to the consumer's account, interest at 2% per month shall be paid to the consumer for the period beyond two months.

Middle paragraph of Cl.29.08 (a) deals with the period of limitation of 2 years. According to Mr.Gupta two years period has to be reckoned on which date short claim was noticed by the petitioner and even after noticing such short claim if the petitioner had slept over the matter for more than two years, in such circumstances, period of 2 years has to be restricted only from the date of demand and so far as the present case is concerned, immediately after noticing short claim based on the audit report, demand is raised as per Annexure-a dated 23.06.2007. Therefore, he contends that petitioner came to know of such short claim and within 2 years from that date billing has been raised, therefore order passed by R-2 has to be quashed. Per contra, Mr.Reddy contends that the same paragraph has to be read holding that two years period has to be reckoned only in respect of the short claim for a period of 2 years from the date of issuance of demand and not earlier to that. If the contention of R-1 is accepted in Cl. 29.03 itself, there would not have been restriction in regard to the demand of a short claim. Cl. 29.08 has to be considered for the purpose of calculation of period of 2 years only from the date of knowledge and not from the date on which the first sum became due. It is not in dispute that the short claim was made known to the petitioner only when it received the audit report. The same date has to be considered as the date on which such sum became first due. There was no occasion for the petitioner to raise a bill prior to the receipt of the audit report. Therefore, this Court is of the opinion that the period of two years has to be counted from the day on which petitioner-company has

come to know of such short claim. This paragraph has to be interpreted to restrict the period of two years if the petitioner-company has slept over the matter even after two years after noticing short claim or wrong classification. Therefore, point No.1 has to be answered in favour of the petitioner.

In the result, this petitioner is allowed. Order passed by R-2 as per Annexure-F is hereby quashed”.

This order of the Hon’ble High Court was challenged by Ghousia College of Engineering before the Division Bench of the Karnataka High Court in W.A. 5 of 2009 (GM-KEB) and the Division Bench by its order dated 09.09.2015 has dismissed the appeal.

d). Further, the text of the Judgement of the Hon’ble High Court of Jharkhand cited by the learned Advocate comes to the aid of the action of the AEE in the instant case. The Judgement was reported in AIR 2016 Jharkhand in Sheo Shakti Cement Industries – vs – Jharkhand Urja Vikas Nigam Limited. The Judgement reads as follows :

“Error in raising correct bills occurred due to difference in Multiplying Factor in the old CTPT Metering Unit which was removed and the new CTPT Metering Unit which was installed on 27.01.2011. The contention that the bill for the period between 29.01.2011 to 31.03.2014 were paid by the petitioner and thus, supplementary bill dated 04.06.2014 is barred under Section 56 (2) of the Electricity Act, 2003 cannot be accepted. The fact that petitioner had consumed electricity supplied by respondent Nigam is not disputed. The Installation Report dated 27.01.2011 discloses

the particulars of the CTPT Metering Unit which was installed on 2.01.2011 and those particulars are corroborated by the Installation Report dated 31.01.2014 and therefore, the petitioner cannot avoid payment for the electricity consumed by it. The supplementary bill dated 13.05.2014 as corrected by bill dated 04.06.2014 raised on account of less Multiplying Factor is not barred under Section 56(2) of the Electricity Act, 2003 (para 7)”

9. In the light of the above decisions of the Hon'ble High Courts and after considering both oral and written submissions made by both the parties it is seen that there are no vital and proper reasons to interfere with the order of the CGRF and the proceedings of the AEE. Therefore the appeal is dismissed.

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

To

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3. The Assistant Executive Engineer (EI), O & M sub-division, MESCOM Sorab sub-division, Sorab, Shivamogga District.

4. The Chairperson, CGRF, MESCOM, Office of the Superintending Engineer, O&M Circle, Shivamogga.

5. Managing Directors of ESCOMs.
6. PS to Hon. Chairman, KERC
7. PS to Hon. Member (A), KERC
8. PS to Hon. Member (M), KERC
9. Secretary, KERC