

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-424/2021
Dated 28/05/2021

In the matter of

Sri K Narasimha,
S/o. Late Krishnama Naidu,
No. 591, 4th Cross, 8th Main,
BSK 1st Stage, 2nd Block
Bengaluru – 560050.

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Vs

Appellant

1) The Assistant Executive Engineer (Elec.),
W-7 Sub-division, BESCO,
Kengeri,
Bengaluru – 560060.

2) Chairperson, Consumer Grievance Redressal Forum (CGRF)
Bengaluru Urban District,
Superintending Engineer (Ele),
West Circle Office, BESCO,
CA Site, No. 05, West of Chord Road,
3rd Stage, Bhima Jyothi, HSBC Layout,
Next to Chord Road Hospital,
Basaveshwarnagar,
Bengaluru – 560079.

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Respondents

1) This Appeal/Representation preferred before this authority by Sri
K Narasimha, Bengaluru Urban District questioning the legality of
the order passed by the Consumer Grievance Redressal Forum
Bagalkot (herein after referred as CGRF), bearing order No.

CP/CGRFBU/BWC/7025-26, dated 03-03-2021 under the provisions of Clause 21.2 of KERC Regulations 2004. The Appellant/Complainant submitted their appeal memo on 30.03.2021 after communication of the order passed by the CGRF. The CGRF passed an order on 03.03.2021, the appeal was registered in this office on 05.04.2021. Hence the appeal is on time.

- 2) The brief facts of the case are that Appellant is the owner of the vacant site bearing No. 7, Katha No. 126 formed in converted Survey No. 41 and 34/5B of Channasandra Village, Uttarahalli Hobli in Bengaluru, who let out the said site to M/s. Sidhartha Minerals a partnership firm on monthly rent basis. M/s. Sidhartha Minerals being the tenant of the Appellant obtained a power supply connection from the Respondent No. 1 through RR No. BS5LG 68973 under LT-5 Tariff Category for industrial purpose. AEE (Ele) Meter Testing Division staff inspected the installation on 19.10.2015 and reported the misuse of the electricity by the consumer M/s. Sidharth Minerals, directed the sub division to raise back billing charges as per the norms. On the basis of MT report the Respondent No. 1 raised back billing charges of Rs. 3,58,594/- as per the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, (herein after called as CoS in

short), issued a provisional notice on 25.11.2015 to the consumer M/s. Sidharth Minerals. Final order was passed on 12.01.2016. M/s. Sidharth Minerals (the consumer of the Respondent No. 1) questioning the order passed by the Respondent No. 1 filed WP 5957/16 and 6050/16 before the Hon'ble High Court of Karnataka, the Hon'ble High Court disposed of the Writ Petitions with a direction to the Respondent No. 1 to hear and decide about the back billing charges within 3 weeks and pass appropriate speaking order. Accordingly the Respondent No. 1 passed a speaking order on 05.12.2017. The owner of the site Sri K Narasimha (Appellant) submitted a representation to the Respondent No. 1 on 26.02.2019 requesting to collect back billing charges from the previous tenant i.e., M/s. Sidharth Minerals as the tenant was evicted from the land which was leased out to him, the possession of the land is with him as an owner and submitted an application for arrangement of temporary power supply connection in his name. However the Respondent No. 1 directed the Appellant to clear the back billing charges owed by M/s. Sidhartha Minerals (Tenant) then only new power sanction in the name of the Appellant will be issued. Challenging the said order, the Appellant filed a complaint before

the CGRF, Bengaluru Urban, the CGRF Bengaluru Urban after hearing the parties dismissed the complaint.

- 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, Bengaluru Urban 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 installation bearing RR No. BS5LG 68973 was sanctioned and serviced in the name of M/s. Sidharath Minerals, who was the tenant of the Appellant, power supply was said to have been misused by the tenant for his industrial purpose i.e., M/s. Sidhartha Minerals, if any back billing charges are liable to be paid, it is the tenant i.e., M/s. Sidhartha Minerals who is liable to pay the same and not the owner of the land. The Respondent Licensee Company is at liberty to initiate appropriate action and recover back billing charges from the consumer i.e., M/s. Sidhartha Minerals.
 - c) The CGRF has failed to take into consideration that the Appellant was not the consumer under RR No. BS5LG 68973, the Respondent Licensee Company is not entitled to recover back billing charges from the Appellant.

- d) The CGRF has failed to take into consideration that back billing charges were raised in the name of M/s. Sidhartha Minerals who was the tenant of the Appellant, who was evicted in due course of law, the premises in question is in the possession of the Appellant, who is entitled to seek independent temporary power supply connection in his name.
 - e) The CGRF has failed to take into consideration that the Respondent No. 1 illegally claiming back billing charges from the appellant who is neither a consumer nor utilized power supply of the Respondent No. 1 for the industry of himself.
 - f) The CGRF has misread Regulation 4.09 Clause IV of CoS erred in dismissing the complaint, 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 05.04.2021 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 26.04.2021, 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 26.04.2021 the Appellant present. Jurisdictional AEE (Ele), W-7 Sub-division, BESCOM was 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. CP/CGRFBU/BWC/7025-26, dated 03-03-2021 passed by the CGRF Bengaluru Urban 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 by both parties including the order passed by the CGRF Bengaluru Urban District.
- 10) Before advertng 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 Appellant is the owner of the vacant site bearing No. 7, Katha No. 126 formed in converted Survey No. 41

and 34/5B of Channasandra Village, Uttarahalli Hobli in Bengaluru, who let out the said site to M/s. Sidhartha Minerals a partnership firm on monthly rent basis. M/s. Sidhartha Minerals being the tenant of the Appellant obtained a power supply connection from the Respondent No. 1 through RR No. BS5LG 68973 under LT-5 Tariff Category for industrial purpose. AEE (Ele) Meter Testing Division staff inspected the installation on 19.10.2015 and reported the misuse of the electricity by the consumer M/s. Sidharth Minerals, directed the sub division to raise back billing charges as per the norms. On the basis of MT report the Respondent No. 1 raised back billing charges of Rs. 3,58,594/- as per the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, (herein after called as CoS in short), issued a provisional notice on 25.11.2015 to the consumer M/s. Sidharth Minerals. Final order was passed on 12.01.2016. M/s. Sidharth Minerals (the consumer of the Respondent No. 1) questioning the order passed by the Respondent No. 1 filed WP 5957/16 and 6050/16 before the Hon'ble High Court of Karnataka, the Hon'ble High Court disposed of the Writ Petitions with a direction to the Respondent No. 1 to hear and decide about the back billing charges within 3 weeks and pass appropriate speaking

order. Accordingly the Respondent No. 1 passed a speaking order on 05.12.2017. The owner of the site Sri K Narasimha (Appellant) submitted a representation to the Respondent No. 1 on 26.02.2019 requesting to collect back billing charges from the previous tenant i.e., M/s. Sidharth Minerals as the tenant was evicted from the land which was leased out to him, the possession of the land is with him as an owner and submitted an application for arrangement of temporary power supply connection in his name. However the Respondent No. 1 directed the Appellant to clear the back billing charges owed by M/s. Sidhartha Minerals (Tenant) then only new power sanction in the name of the Appellant will be issued.

- 12) The copy of the rent agreement between Appellant and M/s. Sidhartha Minerals and the power supply agreement executed in between the Respondent No. 1 and consumer i.e., M/s. Sidhartha Minerals produced along with this appeal makes it clear that the Appellant being the owner of the vacant land leased out the same on monthly rent basis to M/s. Sidharth Minerals which was a partnership firm consisting of 3 partners namely Sri. Gangadhar, Smt. Geetha S Gagadhar and Smt. R Jayasheela. The tenant M/s Sidhartha Minerals represented by one of the partner Smt. Jayasheela filed an application before the Respondent No. 1 for

power connection in the name of M/s. Sidhartha Minerals, the Respondent No. 1 on its satisfaction sanctioned the power in the name of the tenant M/s. Sidhartha Minerals who executed a power supply agreement in favour of Respondent No. 1. Installation bearing RR No. BS5LG 68973 under LT-5 Tariff category was serviced by the Respondent No. 1 in the name of M/s. Sidhartha Minerals who was using the power supply of the Respondent No. 1. The staff of the MT division visited the installation on 19.10.2015, noticed misuse of the power by the consumer, back billing charges of Rs. 3,58,594/- was raised in the name of the consumer i.e., M/s. Sidhartha Minerals who misused the power supply of the Respondent No. 1 liable to pay the back billing charges. At no point of time the installation being RR No. BS5LG 68973 was serviced in the name of the Appellant, the Appellant was not the consumer of the Respondent No. 1. The Appellant being the owner of the land was not the consumer of the Respondent No. 1 did not used the power supply of the Respondent No. 1 for any purpose in respect of the premises in question. When the Appellant is not the consumer of the Respondent No. 1, did not utilize the power supply for any purpose in premises in question, the claiming of back billing charges by the Respondent No. 1 from

the Appellant is illegal. When the Respondent No. 1 raised the back billing charges against its consumer M/s Sidhartha Minerals, the Respondent No. 1 has to recover the same from the M/s. Sidhartha Minerals under the provisions of Karnataka Electricity Act not against the landlord (Appellant).

- 13) The records produced in this case clearly indicates that the owner of the land (Appellant) obtained an order of eviction against the tenant (M/s. Sidhartha Minerals), evicted the tenant from the premises in question in accordance with law, thereafter filed an application for temporary power supply connection in his name to the Respondent No. 1 who is a prospective consumer. The Respondent No. 1 without examining regulation 12 of the CoS erroneously placed his reliance on Regulation 4.09 Clause IV of the CoS and rejected the application calling upon the Appellant to pay the back billing charges of the tenant and then only his application for temporary power supply will be considered under the CoS. At this stage it is quite necessary to refer Regulation 4.09 IV of the CoS which reads as under:

“4.09 General

- iv)*** *If any person desires to have electricity for a premises for which the power supply Agreement has been terminated (whether the service line is dismantled or not) he shall be treated as a fresh Applicant and the Licensee shall collect the*

outstanding arrears in respect of the said premises from such person before connection is given.”

- 14) On plain reading of the above said regulation makes it clear that any person desires to have electricity for a premises for which the power supply agreement has been terminated, he shall be treated as a fresh applicant and the licensee shall collect the outstanding arrears in respect of the said premises from such person before connection is given. Admittedly the Appellant did not obtained any power connection in his name for which an agreement was executed in favour of the Respondent No. 1. Actually the power supply agreement was executed by the tenant M/s. Sidhartha Minerals, if any termination of the agreement is to be given effect too, the same is of the agreement executed by M/s. Sidhartha Minerals who was the tenant of the Appellant who was actually evicted in the premises in question. Admittedly Appellant is not the consumer of the Respondent No. 1 at any time such is the case the termination of any agreement pertaining to the Appellant is unwarranted in this case. Therefore the Appellant being a prospective consumer who submitted an application to the Respondent No. 1 for temporary power supply connection, the application of the Appellant is liable to be examined under

Regulation 12 of CoS and not under Regulation 4.09 Clause IV, however the Respondent No. 1 as well as CGRF misread Regulation 4.09 Clause IV of CoS erroneously rejected the application of the Appellant and the complaint respectively which is illegal and incorrect.

- 15) As could be seen from the records that the Appellant through their advocates sent a notice to the Respondent No. 1 on 10.12.2015 intimating that his tenant M/s. Sidhartha Minerals availed the power supply against whom an order of back billing charges was passed. The lease period of the tenant is expiring on 31.03.2016 and requested to the Respondent No. 1 to recover the back billing charges from the tenant or else cut off the power supply. It was also made known to the Appellant that he cannot be made liable either for back billing charges or for any arrears of power consumption charges. When the Respondent No. 1 was notified regarding the liability of payment of back billing charges by M/s. Sidhartha Minerals who consumed the power supplied by the Respondent No. 1, the Respondent No. 1 is duty bound to recover the back billing charges from M/s. Sidhartha Minerals and not from the Appellant. The Respondent No. 1 instead of initiating coercive steps for recovery of back billing charges against M/s. Sidhartha

Minerals, only letter correspondence was made with the said partnership firm. After evicting the tenant from the premises now the Respondent No. 1 taking the undue advantage of the filing of application by the Appellant for temporary power supply connection, instead of considering his application independently insisting the Appellant to pay the back billing charges owed by M/s. Sidhartha Minerals which is nothing but an height of illegality. It is the bounded duty of Respondent No. 1 to initiate coercive steps for recovery of back billing charges from M/s. Sidhartha Minerals separately and recover the same from M/s. Sidhartha Minerals and not from the Appellant. The Respondent No. 1 shall not insist the Appellant to pay the back billing charges due from M/s. Sidhartha Minerals while considering the application of the Appellant for temporary power supply connection as both issues are separate and independent. The CGRF without examining these aspects in a right prospective erred in dismissing the complaint, the order passed by the CGRF suffers from material illegalities.

- 16) 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.

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

No. OMB/B/G-424/2021/D-1542

Dated: 28-05-2021

O R D E R

- 1) The appeal is allowed.
- 2) The order passed by the CGRF bearing No. CP/CGRFBU/BWC/7025-26, dated 03-03-2021 is set aside.
- 3) The Respondent No.1 Licensee company is directed to consider the application of the Appellant for temporary power supply connection afresh under Regulation 12 of the CoS within 15 days from the date of the receipt of the order without calling upon the appellant to pay back billing charges of Rs. 5,11,389/- pertaining to M/s. Sidhartha Minerals. However this order will not come within the way for the Respondent No. 1 licensee company to recover the back billing charges from M/s. Sidhartha Minerals as per the provisions of the Electricity Act 2003.

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

- 1) Sri K Narasimha,
S/o. Late Krishnama Naidu,
Residing at No. 591, 4th Cross, 8th Main,
BSK 1st Stage, 2nd Block
Bengaluru – 560050.
- 2) The Assistant Executive Engineer (Elec.),
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- 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.