

# BEFORE THE ELECTRICITY OMBUDSMAN

No.16 C-1, Miller Tank Bed Area (Behind Jain Hospital)  
Vasanthanagar, Bengaluru-560052.

Present: **R. Sharada,**  
**District Judge (Retd)**  
**Electricity Ombudsman,**

**Case No. OMB/B/G-419/2021**

**Dated: 23/07/2021**

In the matter of

Jodhani Papers Private Limited,  
No. 32 & 33, Doddaballapura Industrial Area,  
Bashettihalli, Near Factory Circle,  
Doddaballapura,  
Bengaluru Rural District – 561203.

**Represented by:**

Navayana Law Offices,  
No. 205, 2<sup>nd</sup> Floor, Triguna Icon,  
Wilson Garden, Hosur Main Road,  
Bengaluru – 560027.

- Appellant

Vs

- 1) Chairperson, Consumer Grievance Redressal  
Forum/(CGRF)  
Bengaluru Rural District,  
Superintending Engineer (Ele.)  
East Circle Office, BESCOM,  
# 232, 6<sup>th</sup> Main Road, 3<sup>rd</sup> Cross,  
HRBR Layout, 2<sup>nd</sup> Block, Banasvadi,  
Bengaluru – 560051.
- 2) The Assistant Executive Engineer (Elec.),  
O & M Doddaballapura Urban Sub Division,  
BESCOM, Doddaballapura.

- Respondents

This Appeal is filed by the Complainant/Appellant under Section 42 (6) of Electricity Act 2003, R/W KERC Regulations 2004, with a prayer to set aside the order bearing No. CGRF/03/2020-2021/498184, dated 11.12.2020 passed by the CGRF Bengaluru Rural of BESCOM, further, consequently direct the Respondents to refund an amount of Rs. 10,70,000/- billed and paid by the Complainant together with 2% interest per month and cost as per the Conditions of Supply of Distributions Licensees in the State of Karnataka. Further with a prayer direct the Respondent BESCOM to pay compensation as per the KERC Licensees Standards of Performance Regulations 2004, for all its acts and omission for each day of non-compliance from the date of the omissions and up to date of its redressal in full in accordance with law and also such other incidental order as deemed fit in the interest of justice and equity.

- 1) It is the case of the Complainant/Appellant that Complainant is a manufacturer of KRAFT PAPER having its industry at Doddaballapura Industrial Area. The unit went into production in the year 2004. After coming into force of the Act i.e., Micro Small and Medium Enterprises Development Act 2006, the Complainant filed Entrepreneurs Memorandum declaring that the

company has commenced production of KRAFT PAPER in the year 2004 and they got certificate by the Directorate of Industries and Commerce, Government of Karnataka dated 26.03.2004, indicating the category of the unit as “**Small/Manufacture**” of KRAFT PAPER. The memorandum was assigned with the number 290211200035.

- 2) Further it is the case of the Complainant/Appellant that the Government of India, Ministry of Micro Small and Medium Enterprises in order popularize, the working of the MSME and ease of registration opened up registration under its popular scheme titled as **Udhyog Aadhar and Udhyam**. The Complainant has all the time remained qualified and entitled as an MSME since the date of issuance of certificate i.e., 26.03.2007. Further they applied for Udhayam Scheme and obtained URC (Udhyam Registration Certificate) bearing No. UDYAM-KR-402-0000440 in which the date of commencement of production is shown as 10.08.2004.
- 3) Further it is case of the Complainant/Appellant that they were conducting its manufacturing activity and had obtained power supply in RR No. DHTP69 and they have been promptly paying electricity bills issued by Respondent No. 2.

4) Further it is stated that the Central Government imposed a Nationwide lock down with effect from 24.03.2020 and same was extended from time to time by the Central as well as State Government in order to curtail the spread of the Covid-19 pandemic. Noticing the plight of the industries due to prolonged lock down and inability to pay their monthly dues to ESCOM's the State Government announced the various relief measures for both Large and Small and Medium scale Industries in providing reliefs from payment energy dues. It was noticed by the State Government that MSME units have suffered huge production losses due to lock down and that it will take some time for them to revive. Hence the State Government of Karnataka decided to waive off the fixed charges for 2 months i.e., April 2020 and May 2020 through its Government Order No. ENERGY 128 PSR 2020 Bengaluru dated 08.05.2020.

5) Further it is stated that the Complainant/Appellant has submitted various letters commencing from the letter dated 01.08.2020 up to letter dated 04.11.2020 giving details and clarification to the 2<sup>nd</sup> Respondent stating that the Complainant as an MSME category industry from the date of its establishment and certificate is also issued on 17.07.2020, thereby the

Complainant Industry was entitled to the relief granted under the Government Order dated 08.05.2020 for waiver off fixed charges for the month of April 2020 and May 2020. However without prejudice to the rights of the Complainant and only in order to avert disconnection of supply of electricity, the Complainant has paid fixed charges of Rs. 5,35,000/- as claimed in the power bills for each of month i.e., April 2020 and May 2020, together amounting to Rs. 10,70,000/-. Further they requested to waive off the charges of power bills April 2020 and May 2020 and further prayed to refund the amount of Rs. 10,70,000/-, whatever they have paid. But the Respondents have not taken any action, thereby having no any other alternative the Complainant/Appellant approached CGRF, BESCOM and filed a complaint which is No. in CGRF/03/2020-2021.

- 6) The Respondents have appeared before CGRF after receiving notice and filed reply statement before it. According to the reply of the Respondents the industry bearing RR No. DHTP16A is seeking for deferring of fixed charges for the month of April 2020 and May 2020 by producing the MSME Registration Certificate which was availed on the later date that is in the month of July 2020 that is after the date specified by the

Government of Karnataka in its order. With this the Respondents submitted that the Complainant/Appellant is not entitled for any waiver as claimed by it and finally they prayed for dismissal of the complaint.

- 7) After hearing both the parties and also upon holding enquiry the CGRF has passed order in case No. CGRF/03/2020-2021/498184, dated 11.12.2020, and rejected the complaint. Aggrieved by the said order the Appellant/Complainant has preferred this appeal before this Authority on the grounds as mentioned herein under: -

The findings given by the CGRF in case No. CGRF/03/2020-2021/498184, dated 11.12.2020, neither according to law nor established proceedings, because the findings of the CGRF that the Complainant failed to produce the hard copy of the registration prior to the Government order dated 08.05.2020 without there being a condition contemplated under the notification are all untenable, illegal and patently capricious. The CGRF has erred in not noticing that the Complainant had remained within the eligible units prescribed for

registration as an MSME and having initially obtained the certificate dated 26.03.2007, thereby remained as MSME and its status has not changed. The CGRF further erred in observing that the certificate dated 26.03.2007 was valid for 2 years i.e., 26.03.2009 and erred in not construing that the Complainant did not cease to be an MSME. Further the CGRF erred in not noticing the true import of the registration under the changed and relaxed scenario of Udhyam registration because the CGRF has not noticed the date of incorporation of the Complainant enterprises which is noted as 05.06.1992 and the date of commencement of the production has been noted as 10.08.2004. Thereby the CGRF ought to have been observed that the Complainant was entitled to the benefits under the Government order dated 08.05.2020. The MSME Act and Udhyog Aadhar and Udhyam Scheme of registration are all beneficial legislation under schemes and therefore require liberal interpretation having regard to the object sought to be achieved by the Government.

But the CGRF has erred in not noticing that the true intention behind the issuance of Government Order dated 08.05.2020, because there was a suffering of the industry especially small and medium scale industries due to Nationwide Covid-19 pandemic. Further the Forum has erred in not noticing that it is trait of law, that the MSME registration is valid indefinitely as well as the business is running because the Government order does not specified any pre conditions for the waiver of the demand charges and there is no requirement to produce the certificate of MSME before 08.05.2020. Therefore, the Complainant is unconditionally entitled for waiver of fixed charges for the months of April 2020 and May 2020. With all this the Complainant/Appellant has prayed to allow the appeal as prayed for in the interest of justice and equity.

- 8) This Authority has issued notice to the Respondents, the 2<sup>nd</sup> Respondent has appeared before this Authority and filed written reply stating that the Complainant has not produced MSME certificate issued by the State Government of Karnataka within



time fixed. Further the Entrepreneurs Memorandum part 1 produced by the Complainant shows that the said document is valid only for 2 years, thereby the Complainant is not entitled for waiver off electricity charges as per the Government notification, further stated that the Complainant/Appellant has produced MSME certificate dated 17.07.2020, but they have not filed the certificate required as per the Government Order showing that as on the months of April 2020 and May 2020. The Complainant had Udhyam Registration Certificate which is later the date of Government of Karnataka Order. The CGRF has considered of this facts and circumstances of the case and also found that the Complainant is not entitled for any relief, thereby rejected the complaint. The order of dismissal by the CGRF in case No. CGRF/03/2020-2021 is in accordance with law thereby interference of this court is not necessary. Hence he prays to dismiss the appeal in the interest of justice and equity.

- 9) Heard the arguments, perusal of the records.
- 10) At this stage the below mentioned points arose for my consideration.
  - a) Point No. 1: - Whether the order passed by the CGRF, CGRF/03/2020-2021/498184, dated

11.12.2020 is capricious, perverted and not sustainable under law, thereby the interference of this Authority is needed.

b) Point No. 2: - What Order?

11) As per the discussions made herein above my answers to the above points are as below: -

a) Partly in the Affirmative.

b) As per final order.

12) During course of arguments the Learned Counsel of the Complainant/Appellant has appeared before this Court and submitted that the Complainant is an industry under MSME manufacturing KRAFT PAPER. It has commenced production of KRAFT PAPER in the year 2004, and in the year 2007 a certificate is also issued by the Government of Karnataka indicating complete unit as small/manufacturer of KRAFT PAPER. Thereafter the Government of India, Ministry of MSME in order to popularize the scope of MSME's and also progress in work opened up a registration under its popular scheme titled as Udyog Aadhar and Udyam. The Complainant as all the time remained as qualified unit and entitled for all the benefits which will be given to MSME's. Further the Learned Counsel has

submitted that due to Nationwide lock down in order to curtail the spread of Covid-19 pandemic, the Central Government has noticed the plight of the industries especially the industries coming under the MSME, has provided some reliefs from payment of energy dues. Accordingly, the State Government has also decided to waive off the fixed charges for 2 months i.e., April 2020 and May 2020. A newspaper publication also issued in this regard. The Complainant in order to avoid disconnection of electricity, though they were well aware that the Complainant industry comes under MSME has paid electricity charges for the months of April 2020 and May 2020 amounting to Rs. 10,70,000/-Thereafter, they requested the second Respondent to refund the said amount as per the Government Order for waiving off electricity charges. But the second Respondent failed to accept the prayer of the Complainant. Having no alternative the Complainant has approached Consumer Forum in case No. CGRF/03/2020-2021. But the Forum who is arrayed as first Respondent herein has failed to understand the scope of MSME Act as well as failed to note this Act is social beneficial legislation to encourage working process of the Small scale Industries which comes under MSME. Thereby without giving

legal look into the documents produced by the Complainant, the first Respondent has dismissed the complaint which is not in accordance with law. Further in support of his arguments he has produced the order copy passed by the CGRF case No. CGRF/03/2020-2021/498184, dated 11.12.2020 and Entrepreneurs Memorandum part 1 acknowledgement dated 26.03.2007. The copy of the Udyog Aadhar booklet and copy of the notification issued by the Government of Karnataka in Government Order No. ENERGY 128 PSR 2020, Bengaluru dated 08.05.2020 and also the Udyam registration certificate issued by Government of India in favour of Appellant/complainant dated 17.07.2020 along with their documents.

- 13) During the course of arguments, the second Respondent has reiterated the contents of his reply placed before this Authority finally submitted the order passed by the CGRF, is in accordance with law and prays for dismissal of the appeal.
- 14) I have perused the entire records once again. Having given my attention to the above said facts and circumstances, I have come to the conclusion which is herein under.
- 15) Undoubtedly the Complainant is a Small scale Industry running its operation from 2004 and after coming into the force

MSME dated 16.06.2006 has obtained declaration that it has commenced production of KRAFT PAPER in the year 2004. The certificate is issued by the Directorate of Industries and Commerce, Government of Karnataka. It is also not disputed by the Respondent regarding the Complainant being a registered MSME Unit and having availed power connection. That apart on perusal of the documents particularly Annexure-2 Entrepreneurs Memorandum Part 1 acknowledgment, annexed to the appeal, it is further proved that the Complainant is MSME unit from 26.03.2007 and has been provided unique Entrepreneurs Memorandum number 290211200035. In furtherance to its status as stood and continued even to this day has obtained Udhogam Registration Certificate which discloses the date of commencement of production as 10.08.2004 and this certificate of registration is issued on 17.07.2020 as per vide Annexure-4 annexed to the appeal.

- 16) The State Government of Karnataka as a step-in aid has promulgated its scheme due to Covid-19 pandemic vide No. ENERGY 128 PSR 2020, dated 08.05.2020, and that has decided to waive the fixed charges for 2 months i.e., April 2020 and May 2020. The Complainant being MSME unit and having possessed

the valid certificate has made an application for relief granted under the Government order i.e., ENERGY 128 PSR 2020 Bengaluru dated 08.05.2020 for waiver off fixed charges for the month of April 2020 and May 2020.

17) Further on careful scrutiny of Annexure 2 and 4 produced by Appellant/Complainant annexed to the appeal, it is only discloses the date of the issuance of the certificate but does not speak about the validity of the period of such MSME units or any date of expiry of validity of the certificate is mentioned. From the above documents I can safely say that the Complainant unit is MSME unit and continued to stay in the same position and though the Government of Karnataka in para 1 and 2 has stated as: -

- 1. The Demand / Fixed Charges payable by consumers who are recognized as MSME industries and hold valid certificate in that regard can avail waiver of demand and fixed charges for the months of April and May 2020.*
- 2. The Demand / Fixed charges payable by industries other than industries having valid certification as MSME for the months of April and May 2020 shall be deferred until 30.06.2020.*

but upon plain reading of the said order I have no difficulty in coming to the conclusion that the Complainant is a MSME unit throughout the year 2004 till date, and is entitled for the benefit

under the Government order dated 08.05.2020 for waiver of fixed charges for the months of April 2020 and May 2020.

- 18) I have perused the orders passed by the CGRF and I have come to the conclusion that the Forum has erred in noticing the above said fact and has heavily relied upon the registration of the Complainant unit under Udyog Registration Certificate which is dated 17.07.2020. The Forum has further failed to notice in the said Annexure-7, Udyam Registration Certificate produced by the Appellant annexed to the appeal which clearly demonstrate that the date of incorporation/registration of enterprise is 05.04.1992, the date of commencement of production/business is 10.08.2004, but has heavily relied upon the date of Udyam Registration which is issued on 17.07.2020 and declined the benefit under the scheme of Government of Karnataka to the Complainant. Hence the said order passed by the Government of Karnataka to extend relief to the MSME units which are suffering losses because of Covid-19 pandemic restrictions and lock downs imposed, has come with novel idea to benefit such units from payment of fixed charges for the months of April 2020 and May 2020. Such benefit cannot be defeated to the Complainant, who a MSME unit and the fact that Complainant has been a MSME unit

since the date of its incorporation till date is neither opposed nor disputed by the Respondents. Under these circumstance of the case in order to give correct meaning and full effect of notification ENERGY 128 PSR 2020, dated 08.05.2020, I am of the view that, the impugned order passed by the Respondent No. 1/Forum is contrary to law and also to the Notification, as such the same is unsustainable in law. Hence, the interference of this Authority is very much necessary, thereby having regard to the facts and circumstances of the case and also as per discussions made herein above, I am of the firm view that the order passed by the First Respondent has to be set aside, consequently appeal has to be allowed extending the benefit of waiver in payment of fixed monthly electrical charges to the Complainant as per the Government Order ENERGY 128 PSR 2020 Bengaluru dated 08.05.2020.

- 19) Then coming to the payment of interest as claimed by the Complainant/Appellant, he has stated in his complaint before CGRF as well as before this Authority that he has paid the fixed charges to the Second Respondent for the month of April 2020 and May 2020 only with an intention to avoid disconnection of electricity. However the Second Respondent has not denied the



submission made by the Appellant/Complainant that he had made payment towards fixed electricity charges for the months of April 2020 and May 2020 to the tune of Rs. 10,70,000/-. Further it is not the claim of the Complainant/Appellant that the Second Respondent demanded him to pay said fixed charges at any point of time on the threat of disconnecting electricity connection. Further it is seen from the pleadings of the parties that the Second Respondent never put the Complainant/Appellant under the threat of disconnection of the electricity to his unit. Such being the situation and also as per the discussion made herein above I am of the opinion that the Second Respondent is not liable to pay any interest upon the payment made by the Complainant towards fixed electricity charges for the month of April 2020 and May 2020. With this I hold that the Complainant/Appellant is entitled to refund of electricity charges paid to the Second Respondent for the months of April 2020 and May 2020 only and I answer point No. 1 in partly affirmative.

- 20) As per the discussions made herein above in Point No. 1, I proceed to pass the following order: -

## O R D E R

**No. OMB/B/G-419/2021/D-1562**

**Dated: 23-07-2021**

The appeal filed by the Appellant/Complainant under Section 42 (6) of Electricity Act 2003, R/W KERC Regulations 2004, is hereby allowed in part.

The order passed by the First Respondent in case No. CGRF/03/2020-2021/498184, dated 11.12.2020 is hereby set aside.

Further the Appellant/Complainant is entitled to the benefit of waiver of demand under order of Government of Karnataka, ENERGY 128 PSR 2020, Bengaluru, dated 08.05.2020, from making payment of fixed electricity charges for the months of April 2020 and May 2020.

Further the Appellant/Complainant is entitled for repayment of Rs. 10,70,000/- if he paid, and the Second Respondent is directed to refund the same to the Appellant/Complainant within a month from the date of this order.

The Appellant/Complainant is not entitled for any interest as claimed in the appeal memo, to this extent the prayer of the Appellant is stood rejected.

Sd/-  
(R. Sharada)  
Electricity Ombudsman.

- 1) Jodhani Papers Private Limited,  
No. 32 & 33, Doddaballapura Industrial Area,  
Bashettihalli, Near Factory Circle,  
Doddaballapura,  
Bengaluru Rural District – 561203.
- 2) Navayana Law Offices,  
No. 205, 2<sup>nd</sup> Floor, Triguna Icon,  
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- 3) Chairman, Consumer Grievance Redressal Forum/(CGRF)  
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Bengaluru Rural District,  
Bengaluru – 560051.
- 4) The Assistant Executive Engineer (Elec.),  
O & M Doddaballapura Urban Sub Division, BESCOM,  
Doddaballapura.
- 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.