

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/M/G-420/2021
Dated 26/03/2021

In the matter of

Surabhi Latex Pvt. Ltd.,
Represented by its Managing Director,
Madasuru, ML Halli Post,
Sagara,
Shivamogga – 577401.

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Vs

Appellant

- 1) The Executive Engineer (Elec),
O & M Rural Sub-Division, MESCOM,
Sagara – 577401.
- 2) The Assistant Executive Engineer (Elec),
O & M Rural Sub-Division, MESCOM,
Sagara – 577401.

Represented by:

H.V. Devaraju, B.A., LL.B.,
Advocate,
No. 39, Shop No. 24, Mezzaine Floor,
A.S.V.N.V. Bhavan, K.G. Road,
Bengaluru – 560009.

- 3) Chairperson, Consumer Grievance Redressal Forum (CGRF)
Superintending Engineer (Ele),
O & M Circle, MESCOM,
Near Railway Station, P.B.No. 49,
Shivamogga District.

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Respondents

- 1) This Appeal/Representation preferred before this authority by Surabhi Latex Pvt. Ltd. questioning the legality of the order passed by the Consumer Grievance Redressal Forum, MESCOM, Shivamogga District (herein after referred as CGRF), bearing No. ಮವಿಸಕಂ/ಗ್ರಾ.ಕು.ಕೆ.ನಿ.ವೇ/18/13717-26, dated 03.02.2021 under the provisions of Clause 21.2 of KERC Regulations 2004. After communication of the order passed by the CGRF, the Appellant/Complainant submitted their appeal memo on 25.02.2021. The CGRF passed an order on 03.02.2021, the appeal was registered in this office on 25.02.2021. Hence the appeal filed is in time.
- 2) The brief facts of the case are that the Appellant applied for sanction of power supply with Respondent No. 1 for industrial purpose. The Respondent No. 2 sanctioned a contract load of 125 KVA to the Appellant under HT 2 (a) Tariff Category on 21.12.2015. The Appellant availed the power supply by executing the work under self-execution scheme. The Appellant submitted a letter on 21.09.2019 request to reduce the contract demand from 125 KVA to 50 KVA. On 25.02.2019 the Respondent No. 2 ordered for reducing the contract demand with a condition that the Appellant has to replace the current transformer for suitable

capacity of 50 KVA by purchasing the same and other conditions under self-execution scheme, later the Respondents on 28.11.2019 replaced the current transformer, the same has been calibrated by the AEE (Ele.), HT Rating Sub Division, MESCOM. Since then, the Respondents given effect to the reducing contract demand, the Respondent No. 2 ordered for retaining Rs. 90,500/- out of the security deposit made by the Appellant, the balance amount of Rs. 2,87,000/- shall be adjusted to the arrears as on the date of the reduction of the load and excess refundable security deposit shall be adjusted to the arrears and future consumption charges. The Respondents have illegally retained an amount of Rs. 98,784/-, therefore the Appellant filed a complaint before the CGRF, the CGRF without examining the case of the Appellant in a right prospective, erroneously dismissed the complaint which is highly illegal.

- 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, Shivamogga is illegal and incorrect, the same is an outcome of non-application of mind.
 - b) CGRF has failed to take into consideration that the Regulations 34.02 of COS will apply for reduction of load.

- c) The CGRF failed to take into consideration that the reduction of contract demand order was passed on 25.03.2019, the Respondents are liable to refund the balance security deposit amount to the Appellant. Therefore the Respondents have illegally received an amount of Rs. 98,784/- from the Appellant which is liable to be refunded.
- d) CGRF has failed to taken into consideration that the Superintending Engineer (Ele.) who was the Chairman of the CGRF Shivamogga, was arrayed as Respondent No. 3 in the case, therefore the Chairman CGRF being a party to the proceedings cannot hear and decide the case. The CGRF has failed to take into consideration that the rule of law about judicial conduct lays down that no judge can be considered to be competent to hear a case in which he is directly and indirectly interested, 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 25.02.2021 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 17.03.2021. 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) Heard the arguments.
- 6) On 17.03.2021 Appellant Representative Sri. B.V. Prakash (Managing Director) present.
- 7) Respondent No. 1 and 2 filed the written arguments/parawise reply to the appeal memo where in the sanction of the power under HT 2 (a) Tariff Category for industrial purpose to the Appellant on 21.12.2015 was admitted. The Appellant submitted a letter dated 29.01.2019 for reduction of the contract demand from 125 KVA to 50 KVA was admitted. It is contended that the Second Respondent passed an order on 25.03.2019 ordering for reduction of the contract demand with certain conditions. As per condition No. 8, the Appellant has to replace the current transformer for suitable capacity of 50 KVA by purchasing the same under self-execution scheme. The Appellant has failed to purchase the transformer within the stipulated time. Sufficient letter correspondence was made in this regard, lastly the Respondents themselves replaced the current transformer which was calibrated by the AEE (Ele.) HT

Rating Sub Division, MESCOM on 28.11.2019. Contract demand was reduced as requested by the Appellant. The reduced contract demand was given effect to from 28.11.2019 intimating the Appellant that out of the total security deposit an amount of Rs. 90,500/- was retained as a security deposit in respect of the reduced contract demand, the balance security deposit amount shall be adjusted to the arrears as on the date of reduction of the load. The excess refundable security deposit was ordered to be adjusted to the arrears and future consumption charges. On 30.12.2019 an official memorandum was issued by the Respondent No. 2 retaining security deposit of Rs. 90,500/-, out of balance amount of Rs. 2,87,000/-, an amount of Rs. 1,74,477/- was adjusted towards dues from July 2019 to November 2019 and Rs. 1,12,523/- was adjusted to the month of December 2019. The Appellant has failed to comply the order of reduction of contract demand, did not purchased and installed suitable current transformer. There is no deficiency of service by the Respondents. The CGRF on taking into consideration the facts and circumstances of this case rightly dismissed the complaint, prayed for dismissal of the appeal.

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

- a. Whether the order passed by the CGRF Shivamogga is vitiated by bias, the Chairman CGRF is disqualified to participate in the proceedings, when he is arrayed as Respondent No. 3 in the complaint, the judgement rendered by the CGRF is a nullity?
- b. Whether the order bearing No. ಮವಿಸಕಂ/ಗ್ರಾ.ಕು.ಕೊ.ನಿ.ವೇ/18/13717-26, dated 03-02-2021 passed by the CGRF Shivamogga District, rejecting the complaint of the Appellant is illegal, perverse, liable to be interfered by this authority?
- 9) My answers to the above point are;
- a. Affirmative.
- b. Affirmative.

For the following,

REASONS

- 10) I perused the appeal memo, the records produced along with the appeal including the order passed by the CGRF Shivamogga District.
- 11) At the outset, I would like to state that the copy of the complaint filed before the CGRF Shivamogga made available in this case makes it clear that the Superintending Engineer (Ele.) who is the

Chairman of the CGRF Shivamogga was arrayed as a Respondent No. 3 in the complaint. When the Superintending Engineer (Ele.) who is the Chairman of the CGRF was Respondent No. 3 in the case, who is having direct or indirect interest in the Lis (complaint). The CGRF being a quasi-judicial authority, its duty is to discharge their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but requirement to act justly and fairly. When the Chairman CGRF is a party to the complaint, he shall not be a judge in his own case. The quasi-judicial authority must discharge their functions in good faith without bias and not arbitrarily or unreasonably, facilitate to ensure a just and fair decision. The rule of law about judicial conduct lays down that no judge authority can be considered to be competent to hear a case in which he is directly or indirectly interested. A proved interest in authority not only disqualifies him but renders its order a nullity (V. Vishwanathan V/s Rukul Mulk Syed Abdul Wajid AIR 1963 SC 1).

- 12) On plain reading of the order passed by the CGRF, the Chairman CGRF who is a Respondent No. 3, who had an interest in the Lis participated in the process of decision making even though he was disqualified from rendering any decision in the case. Therefore the

order rendered by the CGRF Shivamogga, under the Chairmanship of the Respondent No. 3 is nullity in the eye of law which is liable to be set aside. Accordingly point No. 1 and 2 are answered in the affirmative.

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

No. OMB/M/G-420/2021/D-1535

Dated: 26-03-2021

O R D E R

- a) The appeal is allowed.
- b) The order passed by the CGRF bearing No. ಮವಿಸಕಂ/ಗ್ರಾ.ಕಂ.ಕೊ.ನಿ.ವೇ/18/13717-26, dated 03-02-2021 is set aside.
- c) Matter is remitted back to the CGRF Shivamogga, CGRF Shivamogga is directed to transfer this case to the CGRF Chikamagalur who has to hear and decide the case after notifying to the complainant.

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

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- 5) Chairman, Consumer Grievance Redressal Forum/(CGRF)
Superintending Engineer (Ele),
O & M Circle, MESCOM,
Madhuvana Layout Road, P.B. No. 27,
Chikamagalur.
- 6) PS to Hon'ble Chairman, KERC
- 7) PS to Hon'ble Member (M), KERC
- 8) PS to Hon'ble Member (R), KERC
- 9) PA to Secretary, KERC.