

BEFORE THE ELECTRICITY OMBUDSMAN
No. 16 C-1, Miller Tank Bed Area
Vasanthnagar, Bangaluru-560 052.

Present: S.S. Pattanashetti
Electricity Ombudsman
Case No.OMB/H/G-282/2017
Dated: 14-09-2018

.....

Ramesh M. Aiholli,
C/o Tushar M.Baddi,
"Arihanth Park"
Keshwapur,
Hubballi.

: Appellant.

VS

1. The Assistant Executive Engineer,
HESCOM, Industrial Estate Gokul Road
Hubballi-30(Represented by Advocate
Sri H.V. Devaraju, No.39, Shop No.24,
Mezzanine Floor, A,S,V,N,V,Bhavan
K.G. Road, Bangalore-560 009.
2. The Chairperson, CGRF, Bagalkote District,
HESCOM, Bagalkote.

:Respondent.

This is an Appeal filed under Clause 21.02 of KERC (CGRF & Ombudsman) Regulations, 2004 against the orders of CGRF, HESCOM, Bagalkote District (herein after referred to as the 2nd Respondent) in case No: ಬಿಜಿಕೆ/ಅಅ(ವಿ)/ಕಾನಿಅ(ವಿ)/ಸಕಾನಿಅ(ವಿ)/ತಾಂ.ಸ/1 16383-86 dated: 17-03-2017. The appellant has requested to (A) call for records (B) upon perusal of records be pleased to set aside the impugned communication of AEE as illegal, as it ultra vires the IE Act 2003 the Reg. of COS made thereunder (C) to consider the objection of the complainant seeking justice in a just, fair and dispassionate manner and to pass a reasoned order on merits quashing the CGRF order (D) direct the Respondent licensee to strictly comply with the provisions of the IE Act 2003 and the relevant regulations specified thereunder and the CoS specified by the KERC (E) to take appropriate action against the respondent individual for his wilful disobedience of the Authority of the Hon'ble Commission in issuing the impugned communication (F) to direct the licensee to award compensation as stipulated under KERC SoP Reg 2004 and (G) to pass such other order to meet the ends of justice.

Both the Parties were informed vide letter No.OMB/H/G-282/2017/D-883 dated: 16-05-2017 regarding the availability of provisions in Sub-Regulation 1 of Regulation 20 of KERC (CGRF & Ombudsman) Regulations, 2004 for settlement through conciliation

and mediation. However, they have not availed the benefit of the said provision.

The 2nd Respondent in their order No. ಬಿಜಿಕೆ/ಅಅ(ವಿ)/ಕಾನಿಅ(ವಿ)/ಸಕಾನಿಅ(ವಿ)/ತಾಂ.ಸ/1 16383-86 dated: 17-03-2017 have passed the following order:

“ಆದೇಶ

ಶ್ರೀ ರಮೇಶ ಮಲ್ಲಪ್ಪ ಐಹೊಳೆ ಸಾ: ಗೊರಬಾಳರವರು ಶ್ರೀ ಮಲ್ಲನಗೌಡ ವೀರನಗೌಡ ಪಾಟೀಲ ಗೊರಬಾಳರವರ ರೆವೆನ್ಯೂ ಬೈಲು ಜಾಗೆ ರಿಸ ನಂ. 104/3+4+5ಎ+ಬಿ.ಸಿ/ಡಿ ರ ಬಾಡಿಗೆ ಪಡೆದು ವೆಲ್ಡಿಂಗ್ ಔದ್ಯೋಗಿಕಗೋಸ್ಕರ ವಿದ್ಯುತ್ ಸೌಲಭ್ಯಕ್ಕೆ ಅರ್ಜಿ ಸಲ್ಲಿಸಿದ್ದಾರೆ. ಅದರಂತೆ ಈ ಕೆಳಗಿನ ಆದೇಶ ಮಾಡಲಾಗಿದೆ.

- 1) As per the conditions of supply of electricity of distribution licensee in the state of Karnataka under 4.02 (ii)(b), applicant has to enclose general licence from the local authority along with application. In this case applicant has enclosed general license from PDO Gram panchayat Gorbai, who is not the local/competent authority for the revenue lands.
- 2) According to The Karnataka Land Revenue Act, 1964, under section 95 (2) uses of agriculture land and the procedure for use of agriculture land for other purpose if any occupant of land assessed or held for the purpose of agriculture wishes to divert such land or any part thereof to any other purpose, he shall (not withstanding anything contained in any law for the time being in force) apply for permission to the Deputy Commissioner who may subject to the provisions of this section and the rules made under this Act, refuse permission or grant it on such conditions as may think fit.

- 3) As per above 1 & 2 the applicant has not obtained permission to use agriculture land to non agriculture land from competent Revenue authorities/Deputy Commissioner. Hence the endorsement given by the Executive Engineer (EI), Bagalkot/Assistant Executive Engineer (EI) Ilkal is in order. Accordingly applicant has to furnish NA copy/license for availing power supply for industrial purpose.
- 4) As the Power supply is requested for LT industrial purpose, to avoid future legal complications like, recovery of arrears etc., the applicant is advised to avail the power supply in the name of the land owner.
- 5) Accordingly, the application of the applicant is set aside.”

The Respondent AEE has filed statement of objections/para wise remarks on 06-08-2018 which as follows:

“The 1st Respondent on receipt of the Application secured the feasibility Report from the Section Officer for providing power supply and in the feasibility report, the inspecting officer observed that in the existing transformer was capacity of 25 KVA and in that transformer connected load was 24 HP and required load to the Applicant is required 10 HP and therefore he was recommended for enhancement of existing transformer from 25 KVA to 63 KVA for providing power supply to the Appellant at Sy. No. 104/3+4+5A+BC/D at Gorabal Village, Ilkal Section, Ilkal Sub Division and thereby estimation was prepared and forwarded to Executive Engineer (Ele),. The Executive Engineer has returned the Estimate for sanction of 10 HP in the name of the Appellant with a direction to the 1st Respondent intimate the applicant to produce

the Industrial Non agricultural Copy and thereafter, the Assistant Executive Engineer intimated the Appellant to produce copy of Conversion Order from Agricultural to Industrial Purpose in respect of the Land in Sy. No. 104/3+4+5A+BC/D and on production the action will be taken for sanction of power supply.

The 1st Respondent submits that, the Appellant in response to the said Endorsement, dated 31/12/2016 detailed Reply has been submitted by the Appellant contending that, as there is no provision to produce the Conversion Order and requested to sanction power supply in the name of the Appellant. The Assistant Executive Engineer forwarded the said Representation to the Executive Engineer by its Letter, dated 02/01/2017 and when the matter stood thus, the Appellant has filed a Complaint before the 2nd Respondent/CGRF with an allegations as to the violation of the Section 43 of the Electricity Act. The CGRF on receipt of the Appeal requested the 1st Respondent to submit their Reply and according to the Reply of the 1st Respondent requires to produce the documents. The CGRF after hearing arguments has hold that, the Petitioner/Appellant herein is not entitle for the power supply on the ground that, under 4.02 (ii)(b) that, the Appellant has to enclose the general licence issued by the local authority alongwith his Application. The Applicant/Appellant enclosed general licence issued by PDA, who is not the local authority/competent authority for the Revenue Lands, admittedly the Land in question in Sy. No. 104/3+4+5A+BC/D to measuring 1 Acre 23 Guntas in the name of Sri. Mallikarjuna Patil and Sri.Shankaragouda Patil, which was not converted for Industrial purpose, under which the Appellant claiming to be the Tenant to an extent of 50 Feet X 30 Feet under Rental Agreement, dated 06/11/2016, wherein which does not show as to the boundaries and place of the Land given in favour of the Appellant and when the Land has not been converted for Industrial purpose and therefore, the PDO Grama Panchayath will not get the jurisdiction either to issue Licence and/or No Objection Certificate for provide power supply and to receive the property tax

in the revenue Lands, the Tahasildar is the only competent officer to deal with the revenue lands and therefore, the Certificate issued by the PDO who has no jurisdiction to issue the Licence in respect of the Industries set to have been set up in the Agriculture Lands.

The 1st Respondent submits that, the Condition 4.02(ii) (b) provides for “the Applicant has to enclose general licence from the local authority along with the Application” however, the Applicant/Appellant herein has produced General Licence and No Objection Certificate and also Tax Paid Receipt even dated 03/11/2016 in respect of the Agricultural Lands in Sy. No. 104/3+4+5, admittedly which is the agricultural land and therefore, the sanctioning authority intimated the Applicant to produce the copy of the Conversion Order from Agricultural to Non-agricultural purpose to verify whether, the PDO will get the jurisdiction to issue the licence and when the Land has not been converted, the PDO will not get jurisdiction to issue licence to the Agricultural Land to set up Industry and who is not the local authority and therefore, the Executive Engineer rightly intimated the Assistant Executive Engineer with a request to produce the Conversion Order, converted for Industrial purpose by its Letter, dated 05/12/2016, in turn the Assistant Executive Engineer issued a Letter, dated 31/12/2016 to the Appellant/Applicant intimating the same and therefore, the allegations that non-compliance of Section 43 of the Electricity Act, 2003 does not arises. The explanation of Section 43 of the Act provides that, ‘for the purpose of this sub-section Application means the Application complete in all respect in appropriate form as required by the Distribution Licensee along with the documents showing payment of necessary charges, other compliances and Condition 4.09 provides for arranging power supply by the Licensee shall not be construed to mean that requirements of other laws are fulfilled by the Applicant, it is the Applicant who shall responsible for compliance of all statutory requirements and other law for any non-compliance, the Applicant

alone shall be responsible and licensee shall not be liable for any action what so ever in this regard.

The 1st Respondent submits that, the reading of the said provision very clear that, it is the duty of the Applicant to satisfy as to the required by the Distribution Licensee by producing the documents. In the Present case, the Applicant has produced and relied three (3) documents viz., Licence, Tax Paid Receipt and No Objection Certificate issued by the PDO that to for the revenue Land when he has no jurisdiction and therefore, the Endorsement issued by the Licensee with a request to the Applicant to produce the documents pertaining to Land in question, whether land is converted or not. The Applicant instead of producing the individual conversion order, the applicant has approached before the CGRF. The CGRF after considering the rival contentions of the Appellant and the 1st Respondent has rightly rejected the complaint holding that, the Appellant has not obtained permission from agricultural to industrial purpose from the competent authority.

The 1st Respondent submits that, the grounds raised by the Appellant in the above Appeal are all untenable and mainly the Appellant contended that, the 1st Respondent has not complied Section 43 of the Electricity Act, which does not arise, since the explanation of the Section 43 of the Act which clearly provides as to how the Applicants requires to comply all the requirements for seeking power supply and therefore, non complying as required by the supply company the allegations violation of Section 43 does not arise and the other grounds raised by the Appellant are all untenable and where the Appellant has failed to produce the required documents and therefore, the Appellant is not entitle for any of the prayer as prayed in the above Appeal. The Appellant has produced the documents with list showing under the similar circumstances of

the power supply was provided to the persons and however the same will not help the applicant as the same was provided by oversight which cannot be continued and therefore the appellant is not entitled any reliefs without producing the documents.”

Notices were served on both the parties to appear before this Authority and put forth their arguments. On the e-mail request dated 07-07-2018 of the Representative of appellant, the case was posted to 31-07-2018.

This case was taken up for hearing on 13-06-2017, 06-07-2017, 12-09-2017 06-10-2017, 25-10-2017, 06-04-2018, 17-04-2018, 31-07-2018 and finally on 06-08-2018. Advocate for Respondent-1 AEE was present and filed statement of objections on 06-08-2018. Representative of appellant was also present and filed his memo and submission on 06-08-2018.

The appellant is a tenant over an extent of 50' X 30' vacant space belonging to one Sri M.V. Patil. On 06-11-2016 the appellant has entered into a rental agreement with the land owner Sri M.V. Patil. The appellant has applied to Respondent No-1 for power supply of 10 HP for industrial purpose in the rental premises on 16-11-2016 along with all the documents required as per Clause 4.02 of

Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. In the list of documents permission from the revenue authorities for use of agricultural land to non-agriculture purpose is not mentioned.

It is beyond doubt that the piece of land where the appellant wants to take power supply for industrial purpose is an agricultural land. The appellant wants power supply for industrial purpose which is a non-agricultural activity. Section 95(2) of the Karnataka Land Revenue Act 1964 reads as follows:

“Section 95(2) – If any occupant of land assessed or held for the purpose of agriculture wishes to divert such land or any part thereof to any other purpose, he shall ‘[notwithstanding anything contained in any law for the time being in force]’ apply for permission to the Deputy Commissioner who may, subject to the provisions of this section and the rules made under this Act, refuse permission or grant it on such conditions as he may think fit.”

Heard both parties and examined oral and written statements and other documents filed by both the parties. It is seen that the appellant has requested for power connection for LT Industrial purpose on the agricultural land and he has not produced the permission from Revenue Authorities for using the land for Non-Agricultural purpose.

Fully knowing well that the land is going to be utilised for non-agricultural activities, it would be wrong on the part of the Respondent No.1- AEE to give sanction for supply of electricity. Giving power supply to a non-agricultural activity without a proper permission from the concerned revenue authorities as required under Section 95(2) of the Karnataka Land Revenue Act 1964 would amount to abetting an illegal act of the appellant of utilising agricultural land for a non-agricultural purpose. Hence, the Respondent is justified in asking for permission from the revenue authorities for using the agricultural and for non-agricultural purpose. The CGRF also in their order No. ಬಿಜಿಕೆ/ಅಅ(ಎ)/ಕಾನಿಅ(ಎ)/ಸಕಾನಿಅ(ಎ)/ತಾಂ.ಸ/1 16383-86 dated: 17-03-2017 have rightly rejected the complaint of the appellant, upholding the endorsement given by the Respondent No.1 AEE.

The appellant along with his memo and submission has produced documents pertaining to some other cases wherein under similar circumstances power supply was given by Respondent No.1 to the applicants without submission of Non Agriculture permission from the revenue authorities. A wrong activity cannot be taken as an example for other cases. If power supply is sanctioned for agriculture land without obtaining necessary permission from the revenue authorities it will amount to one Department of the Government

assisting the applicant for violating the provisions of law of another Department.

No. OMB/H/G-282/2017/D-1081

Dated: 14-09-2018

ORDER

For the reasons mentioned above the appeal filed by appellant is hereby dismissed upholding the order No: ಬಿಜಿಕೆ/ಅಅ(ವಿ)/ಕಾನಿಅ(ವಿ)/ಸಕಾನಿಅ(ವಿ)/ತಾಂ.ಸ/1 16383-86 dated 17-03-2017 of the CGRF, Bagalkot.

Sd/-

(S.S.Pattanashetti)
Electricity Ombudsman.

To:

- 1)Ramesh M. Aiholli,
C/o Tushar M.Baddi, M/s. Madhur Enterprises,
Near S.B.I. Keshwapur,Hubli
- 2) The Assistant Executive Engineer,
HESCOM, Industrial Estate Gokul Road
Hubballi-30
- 3) Sri H.V. Devaraju, No.39, Shop No.24,
Advocate, Mezzanine Floor, A,S,V,N,V,Bhavan
K.G. Road, Bangalore-560 009.
- 4) The Chairman, CGRF, HESCOM
Bagalkot.
- 5)The Managing Directors of all ESCOMS
- 6)PS to Hon'ble Chairman,KERC
- 7)PS to Hon'ble Member (A),KERC

- 8)PS to Hon'ble Member(M),KERC
- 9)PS to Secretary, KERC