

BEFORE THE ELECTRICITY OMBUDSMAN
(For the State of Goa and Union Territories)
Under Section 42 (6) of the Electricity Act, 2003
3rd Floor, Plot No. 55-56, Udyog Vihar - Phase IV, Sector 18,
Gurugram (Haryana) 122015,
Phone No.:0124-4684708, Email ID: ombudsman.jercuts@gov.in

Appeal No.176 of 2022

Date of Order:22.09.2022

Shri Mario Valadares,
Goa

.... Appellant

Versus

The Chief Electrical Engineer,
Electricity Department,
Goa and others

.... Respondents

Date of Order: 22.09.2022

The Appellant has preferred an Appeal against the order of Ld. CGRF-Goa in Complaint/Representation No.05/2017/67 dated-27.06.2022. The appeal/representation received in this office on 09.08.2022 by email and the same was admitted for examination and consideration on 11.08.2022. Copy of the same as received was forwarded to the respondents with a direction to endeavour to settle the representation through mutual agreement within 10 days. In case no settlement is achieved through mutual agreement, respondents should file the affidavit of counter reply in the required format, to the appeal/representation within 20 days from the date of Admission Notice.



(A) Submissions by the Appellant:

Appellant submitted the brief facts as under: -

- i. The Complainant is the owner in possession of premises operating under the name "White Pearl Suites", located at Sakwadi – Arpora, Goa.
- ii. That the Complainant has obtained from the Office of the Sub Divisional Engineer, Electricity Department, D/D III (R), O and M, Mapusa, electricity connection which has been provided to the Complainant herein upon compliance with all necessary requisites. The said electricity connections were installed in the Complainant's premises on 2005.
- iii. The said electricity connections bear nos. MUC No. 18E-318 (Installation No. 370 ARN) and MUC No. 18E-319 (Installation No. 369 ARN).
- iv. Thereafter on 18-04-2011, a routine inspection was conducted by the M.R.T. Annexed hereto and marked as **ANNEXURE- A-COLLY** are the Test Sheets for L.T Metering Installation prepared on 18-04-2011.
- v. Pursuant to the routine inspection conducted on 18-04-2011, a Notice dated 26-04-2011 came to be issued by the Office of the Sub-Divisional Engineer, Electricity Department, S/D III (R), O&M.
- vi. Vide the said notice dated 26-04-2011 it was sought to be pointed out to the Complainant that there was no partition between the meter box/CTs and the rest of the panel leaving ample scope for tampering of the metering and that necessary rectification was to be carried out so as to enable sealing of CTs/Meter Box in total isolation of the rest of the circuitry. It was also sought to be informed that the MF of the existing metering was 40; that the existing CTs being overrated the same were to be replaced with 100/5 Amps CTs; that permission to run generator from the competent authority needed to be obtained; that the capacitor of suitable rating should be connected in the circuit; and that as total load of the Resorts is 70KW used for a single entity/purpose and two installation supplies mixing the same warranted availing H.T Connections. It was further sought to be informed that the installation was released as LTD (Domestic) however the intended usage is for commercial purposes (resorts) thereby attracting the provision of clause 126 of the Indian Electricity Act, 2003 of gazetted JERC Supply Code, and that in the meanwhile installation would be back-billed at LTC Tariff from the date of connection. Annexed hereto and marked as **ANNEXURE-B -COLLY** is a copy of the Notice dated 26-04-2011.
- vii. Thereafter on 31-10-2015 the Office of the Sub-Divisional Engineer, Electricity Department, S/D –III, O&M, Mapusa issued Notice bearing caption "Inspection and testing of 2 Nos. L.T. installation of M/S Maria Valadares on 24/10/2016 bearing MUC No. 18E0318 (Inst. No. 370 ARN) and MUC No. 18E-319 (Inst. No. 369 ARN), Mainathbathi, Arpora on 13-10-2016, bearing MUC No. 18E-352-01, 02, 03, 04" with Ref No. "Test Sheet of L.T. Metering installation No. 72 & 73 dated 24/10/2016". Vide this notice it was sought to be informed to the Complainant herein that upon inspection of the two LTD Installations of the Complainant by the MRT it was observed that two individual connections were found released in the name of the Complainant for a total connected load of 59.28KW and utilized for a common commercial project i.e. operating a hotel by name "White Peal Suites", and that as per provision of clause 5.1(3) of the condition of supply of electrical energy, and directed the Complainant to avail single commercial connection immediately. It was

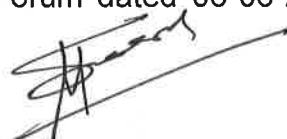


further sought to be informed that in the meanwhile the Complainant's installation would be billed as LTC Installation with a total connected load of 59.28 KW as per the directives of the Chief Electrical Engineer, Panaji and as per the Tariff Order for the year 2016-2017. It was also indicated that as there is no check-meter with M.D indicator installed at the source of both installations, the billing would be carried out by a computation of all the KWH as well as MD Reading of both energy meters at the Complainant's premises. Further, that since the Complainant was said to be using two LTD Connections for commercial activity which allegedly amounted to unauthorized use of electricity as per clause 10.1(1) (iv) of the General Condition of Supply notified vide Gazette Notification published in Official Gazette on 12th July 2012, the Complainant would be assessed under Section 126 of the Electricity Act 2003 for misuse of power supply. It was also sought to be intimated that MF of existing metering is 40 and both the Complainant's installations would be back billed from the date of disconnection. Annexed hereto and marked as **ANNEXURE-C** is a copy of Notice dated 31-10-2016.

- viii. Pursuant to such notice, the Complainant vide Reply dated 10-11-2016 refuted the allegations made in the notice dated 31-10-2015 and inter alia pointed out that connections utilized by the Complainant were with the due consent of the Respondent, and that monthly payments were paid on time without any undue delay, it was also pointed out that the absence of the checkmeter was not the fault attributable the Complainant, and that any billing computation carried out on the basis of KWH as well as meter reading at the premises was improper, furthermore it was pointed out that Section 126 of the Electricity Act would not apply in the matter as there was no instance of "unauthorized use of electricity" on the part of the Complainant. The Complainant also pointed out that the instructions specified in the notice dated 26-04-2011 had been duly complied with by the Complainant and that lapses on the part of the Department could not be used as a means to target the Complainant and recover alleged dues which are baseless.
- ix. On 17-11-2016, yet another notice came to be issued by the Respondent bearing the caption "Erroneous billing to your Electrical installations at Arpora", whereby it was sought to be brought to the notice of the Complainant that that erroneous billing was occurring in the premises of the Complainant allegedly operating as "Royal Elysaih" and presently operating as "White Pearl Suits" at Sanqwasi, Arpora. It was inter alia stated that the multiplying factor was not taken into consideration at the time of billing, it was also alleged that there was a Multiplication Factor of 40 for both the electrical meters of the Complainant and that such fact was informed to the Complainant vide letters dated 26-04-2011. It was also stated that since the billing error attention had come to the notice of the Department, the Department was in the process of computing the actual billing which should have been done and that the difference payable would be informed to the Complainant shortly.
- x. Thereupon on 01-02-2017, the Respondent issued a letter dated 01-02-2017 bearing caption "Erroneous billing to your Electrical installations at Arpora" and Ref "AE-III(R)/Com/16-17/Accts-25/2120 dt. 17-11-2016" whereby the Respondent Department sought to inform the Complainant that the dues payable on account of non-application of multiplying factor had been worked out and that the detailed statements installation were appended therewith. The said letter also indicated that the outstanding due were to be paid within the due date mentioned therein. It is stated and submitted that the said letter dated 01-02-2017 along with the statement thereto stipulated that the amount due on account of difference payable was Rs. 25,47,623/- (Rupees Twenty-Five Lakhs Forty-Seven Thousand Six Hundred

Twenty-Three Only) for MUC No. 18/E-318 INST No. 370-ARN. Annexed hereto and marked as **ANNEXURE-D** is a copy of the letter dated 01-02-2017 issued by the Respondent Department.

- xi. A similar letter dated 09-02-2017 and bearing No. AE-III (R),Coml/16-17/Accts/25/2398 was issued by the Respondent citing the subject of erroneous electricity billing, along with copies of electricity bill mentioning the multiplying factor and an amount of Rs. 26,81,971/- (Rupees Twenty-Six Lakh Eighty-One Thousand Nine Hundred Seventy-One). Annexed hereto and marked as **ANNEXURE-E** is a copy of the letter dated 09-02-2017 issued by the Respondent Department.
- xii. Aggrieved by the said letters dated 01-02-2017 and 09-02-2017, the Complainant sought to challenge them before the Consumer Grievance Redressal Forum by way of Complaint dated 05/2017 which accordingly was disposed of by the Hon'ble Forum by an order dated 06-06-2017 quashing the notices of the Department dated 01-02-2017 and 09-02-2017.
- xiii. While disposing of the Complaint preferred the Hon'ble Forum was pleased to note that the Complainant had not admitted any allegation of commercial use, and that the occupancy certificate produced by the Respondent Department shows the premises to be "Residential Row Houses", the Hon'ble Forum also found that after threatening the Complainant with proceedings under Section 126 of the Electricity Act, 2003 the Department did a volte face in its Reply and decided that they did not want to proceed in the matter and as such there was no consistency in the Department's version which would merit allowing its claim against the Complainant and that the burden of proof lay squarely on the Department. In addition the Hon'ble Forum found that the Department had failed to explain the delay of five and a half years to correct billing errors in the Complainant's installations and recover the unbilled amounts, and that since the letter dated 26-04-2011 contained instructions to the billing in-charge to note down meter details and back bill the Complainant from the date of connection it is indicative that the arrears first became due on 26-04-2011 and that the Department was fully aware but slept over the matter for five and a half years which bars the recovery of the Department's claim, and that consequently Section 56 of the Electricity Act, 2003 were not attracted.
- xiv. The Hon'ble Forum was pleased to direct that in so far as Multiplying Factor and Type of Load were concerned, the Respondent Department were to re-inspect the consumer's installation strictly as per the rules and regulations enumerated, and giving an opportunity to the consumer to give his say in the matter, and thereafter issue subsequent bills.
- xv. Pertinently pursuant to the Order dated 06-06-2017, the Department carried out inspection on 11-08-2017 and thereafter issued a letter dated 25-09-2017, whereby the AE (Com) S/D III (R) Mapusa Department claimed arrears pertaining to the period which had been held by the Hon'ble Forum to be beyond the period of limitation, and applied MF 40 from 17-04-2011 to 14-09-2016, which letter was followed by a communication dated 16-10-2017 whereby disconnection of supply was threatened in case of non-payment of dues within 15 days, which communication was replied to by the Complainant on 27-10-2017.
- xvi. In turn the Department replied by letter dated 30-10-2017 and stated that in terms of the Order of the Hon'ble Forum dated 06-06-2017, the Complainant's installations



were re-inspected on 11-08-2017 and the Inspection Report handed over to the representative of the Complainant.

- xvii. It was pointed out that non-application of Multiplication Factor was discussed with the representative of the Complainant who was requested "to positively consider the due raised towards energy consumed and utilized for commercial activities but which was erroneously not billed", and that the amount could be paid in instalments.
- xviii. It was also sought to be alleged that as the Complainant did not offer his say, a fresh demand for payment of dues arising due to non-application of MF for the billing period from 17-04-2011 to 14-09-2014 was made totally amounting to Rs. 52, 29, 594/-; that bills raised vide letter dated 25-09-2017 were not paid and as there was no say from the Complainant on Notice for disconnection dated 16-10-2017 served upon the Complainant. Further it was stated that since 14-09-2016 the Complainant's Installations were regularly billed MF 40 and the same were paid by the Complainant without dispute and therefore the Complainant's interpretation of subsequent bills was incorrect.
- xix. Aggrieved by such letter dated 25-09-2017 and subsequent disconnection of electricity supply on 26-02-2018, the Complainant by Complaint No. 7/2018 approached the Hon'ble Forum inter alia on the ground that the Department had misinterpreted the Order dated 06-06-2017 passed by the Hon'ble Forum in Complaint No. 05/2018.
- xx. By Order dated 10-04-2018, the Hon'ble Forum allowing the Complaint No. 7/2018 preferred by the Complainant herein observed that vide the order dated 06-06-2017, the Departments claim for back-billing considering MF 40 was held as time barred and that the Department's arbitrary and whimsical conduct was nothing short of harassment of the Complainant. It was further observed that the Department was relentlessly pursuing its arbitrary and whimsical conduct towards the Complainant/Consumer, and instead of resolving the consumer's grievance following the Order dated 06-06-2017, it had only increased harassment of the Complainant.
- xxi. The Hon'ble Forum also observed that though the issue of limitation was decided vide the Order dated 06-06-2017 passed by the Hon'ble Forum, the revised bill was prepared considering the Multiplying Factor 40 with effect from 17-04-2011. Consequently, the Hon'ble Forum was pleased to set aside the Department's claim of Rs. 52,29,594/- and further directed the Chief Electrical Engineer to personally intervene in the matter and ensure that the order dated 06-06-2017 in Complaint/Representation No. 5/2017 is complied with.
- xxii. Aggrieved by the Orders dated 06-06-2017, and 10-04-2017 the Respondent Department approached the Hon'ble High Court of Bombay at Goa in Writ Petition No. 198/2020, wherein the Hon'ble High Court has been pleased to dispose of the said Writ Petition vide Order dated 05-04-2022, and set aside the Orders date 06-06-2017, and 10-04-2018 and consequently remanded the matter to the Hon'ble Forum for fresh adjudication of the Complaint No. 5/2017/47, which complaint pertained to the departmental notices dated 31-10-2015, and 17-11-2016 and energy bills for an amount of Rs. 25, 47, 623/- inspection in relation to multiplying factor; bill dated 01-02-2017 for an amount of Rs. 26,81,971/-; and the Department's demand for Rs. 52,29,594/- in pursuance of the order dated 06-06-2017 in the Complaint No. 05/2017/47. The Hon'ble High Court has also pleased to grant liberty to the



Complainant to make an amendment to Complaint No. 5/2017/47 to incorporate a formal challenge to the later demand to an amount of Rs. 52,29,584/-.

- xxiii. Pursuant to the order of remand passed by the Hon'ble High Court of Bombay at Goa, notices were issued to the parties by the Hon'ble Forum, and upon parties being heard the Order dated 27-06-2022 came to be passed disposing Complaint No. 5/2017 preferred by the Complainant.
- xxiv. In a cursory order, the Hon'ble Forum with respect only restricts itself to the issue as to whether the Department's demand for Rs. 52, 29,594/- aggregate is barred by limitation under Section 56(2) of the Electricity Act, and proceeds to examine the same upon a misapplication of the law as contained in Section 56 of the Electricity Act, 2003 and decisions of the Hon'ble Supreme Court in Prem Cottex v. Uttar Haryana Bijli Vitran Nigam Ltd.
- xxv. Thereafter the Hon'ble Forum was pleased to hold that "it is clear from the foregoing that the restriction of two years imposed under Section 56(2) does not preclude the Licensee Department from raising and recovering an amount genuinely due, even for periods prior to two years" and dismiss the Complaint/Representation No. 5/2017 and also Complaint/Representation No. 7/2018, thereby summarily concluding that the Department's demand for Rs. 52, 29, 594/- was proper, and the consumer was liable to pay the same, which apart from being arbitrary, with respect is perverse, and the exercise of powers with respect apart from being illegal, is an exercise of powers with material irregularity.
- xxvi. The Hon'ble Forum therefore has failed to exercise the jurisdiction vested in it by law in a judicious manner and consequently is unsustainable in law and is liable to be quashed and set aside.
- xxvii. The Appellant has requested the Electricity Ombudsman to quash the following:-
- i. Order dated 27-06-2022 passed by the Consumer Grievance Redressal Forum.
 - ii. Departmental Notices dated 31-10-2015, and 17-11-2015 and energy bills for an amount of Rs. 25, 47,623/-
 - iii. Bill dated 01-02-2017 for an amount of Rs. 26,81,971/-
 - iv. Department's demand for Rs. 52, 29, 594/- in pursuance of Order dated 06-06-2017.

(B) Submissions by the Respondents: -

- (i) As directed in the Admission Notice dated-11.08.2022, to endeavor to settle the Appeal through mutual agreement, Executive Engineer, Div.-6, vide his email dated-23.08.2022 has informed that a meeting was held on 19.08.2022 and requested extension in time .His request was accepted and extension in time for 20 days was allowed vide email dated-24.08.2022 to facilitate further mutual agreement.
- (ii) Executive Engineer, Div.-6 vide email dated-13.09.2022 has informed that matter has been resolved through mutual agreement and copy of minutes of meeting/agreement dated-06.09.2022 has been supplied.



(C) CGRF- Goa's Order dated-27-06-2022 preferred for Appeal:-

Order

"In view of the foregoing, we did not find any merit in the Complaint/Representation no. 05/2017, and consequently in the Complaint/Representation no. 07/2018; hence, the same stand dismissed with no order as to costs. Proceedings closed.

"The Complainant, if aggrieved, by non-redressal of his/her grievance by the Forum or non-implementation of CGRF order by the Licensee, may make an Appeal in prescribed Annexure-IV, to the Electricity Ombudsman, Joint Electricity Regulatory Commission for the State of Goa and UTs, 3rd Floor, Plot No.55-56, Service Road, Udyog Vihar, Phase-IV, Sector-18, Gurugram-122015 (Haryana), Phone No.:0124-4684708, Email ID: ombudsman.jercuts@gov.in within one month from the date of receipt of this order."

(D) Findings & Analysis:-


- (i) I have perused the documents on record, CGRF orders and pleadings of the parties.
- (ii) The documents submitted by the parties have been believed to be true and if any party submitted a fake/forged document, and then they are liable to be prosecuted under relevant Indian Penal Code/Rules/Regulations.
- (iii) The Respondents vide their email dated-13.09.2022 has attached a copy of Minutes of meeting of mutual agreement dated-06.09.2022, which is reproduced below: -

ELECTRICITY DEPARTMENT 3 rd Floor, Vidyut Bhawan, Division-VI, Ansabhat, Mapusa, Bardez-Goa-403507 Tel/Fax No. 2262671 Email- ee6-elec.goa@nic.in	
No.39/3/Tech/Div.VI/2022-23/3206	Date: 06/09/2022
Sub: Appeal No. 176 of 2022 against CGRF Goa order dated 27/06/2022 filed by Shri. Mario Valadares	
Ref: File No. JERC/EO/176/Goa/2022 dated 11/08/2022	
A meeting was conducted as per the directives of the Electricity Ombudsman with a view to settle a representation from Shri. Mario Valadares who has filed an appeal against CGRF order dated 27/06/2022 before his office, by mutual agreement, in continuation to the meeting held on 19/08/2022 and 22/08/2022	
The following were present	
On behalf of Electricity Department (Respondent)	
1. Executive Engineer, Division VI, Shri. Pradip Narvekar	
2. Assistant Engineer, (Tech) Shri. Ivo Dias	
On behalf of Shri. Mario Valadares	
1. Shri. Vledson Braganza	
The following was discussed:	
The Executive Engineer, Shri, Pradip Narvekar explained that he has consulted the higher authority i.e. Chief Electrical Engineer in the matter. However, regrettably the Chief Electrical Engineer has agreed only for 36 installments to settle the issue.	
Shri. Vledson Braganza on behalf of Shri. Mario Valadares agreed to close the matter by settling to clear the outstanding amount of Rs. 52, 29,594/- (Rupees Fifty Two Lakhs Twenty Nine Thousand Five Hundred Ninety Four Only) in 36 installments starting w.e.f 1 st November, 2022.	
Sd/- (Shri. Pradip Narvekar)	Sd/- (Shri. Vledson Braganza)

(iv) The Appellant was requested vide this court email dated-13.09.2022 to confirm the acceptance of mutual agreement, so that case is disposed of accordingly. The Appellant has not replied and it is presumed that mutual agreement is acceptable to him, as the same has been duly signed by his authorized representative Sh. Vledson Braganza.

(E) DECISION

1. In view of the foregoing facts, the issue in the instant Appeal is rendered infructuous, as the parties have entered into a mutual agreement to settle the issue.
2. The Appellant or the Respondents should adhere to their mutual agreement to pay/accept the outstanding/pending amount of Rs.52, 29,594/- in 36 instalments starting from 1st November, 2022.
3. In case, the Appellant or the Respondents are not satisfied with the above decision, they are at liberty to seek appropriate remedy against this order from the appropriate bodies in accordance with Regulation 37(7) of the Joint Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019.
4. Non-compliance of the orders of the Ombudsman by the Electricity Department/Licensee shall be deemed to be a violation of Regulations and shall be liable for appropriate action by the Hon'ble Commission under the provisions of the Electricity Act, 2003.
5. The appeal is disposed of accordingly.



22/9/2022

(M.P. Singh Wasal)

Electricity Ombudsman

For Goa & UTs (except Delhi)

Dated: 22.09.2022