

Before the Karnataka Electricity Regulatory Commission, Bangalore

Dated this the 8th day of January, 2004

Present

- | | | |
|----------------------------------|----------|-----------------|
| 1. Sri. Philipose Matthai | - | Chairman |
| 2. Sri. H.S. Subramanya | - | Member |
| 3. Sri. S.D.Ukkali | - | Member |

CaseNo.OP- 32/2003

Between

M/s Arpee Electrical Pvt. Ltd.,
B - 5, 1st Floor,
Unity Building, J.C.Road,
BANGALORE (through its Managing Director)

Petitioner

and

1. The Managing Director,
BESCOM,
14/3, 4th Floor, CFC building,
Nrupatunga Road,
BANGALORE

2. Asst Exe. Engineer (Elec),
BESCOM, Peenya Sub Dn.,
Bangalore

Respondents

(By Sri S.S.Nagananda, Adv.)

The petitioner, through this petition, is seeking refund of Rs.1, 78, 292/- with interest, which he paid in 1988-89 towards security deposit, additional security deposit and meter security deposit, for obtaining power supply to the extent of 200 kVA, which eventually he did not avail.

2. The essential facts of this case may be briefly stated as follows:

i) The petitioner is a small scale industry that manufactures copper winding wires. He had applied for sanction of power to the extent of 200 kVA, on 28.5.1987. The then Chief Engineer (Ele), Bangalore Zone had asked the petitioner to deposit a security deposit of Rs. 1, 20, 000/-, which he paid on 31.8.1987. On 29.2.1989, the Exe. Engineer (Ele), North Division, KEB, asked the petitioner to deposit a further sum of Rs. 45, 292/- towards estimate charge and Rs. 13,000/- towards meter security deposit. The petitioner complied with these demands as well, on 3.3.1989.

ii) The petitioner waited for three years, as there was no fresh sanction of power by the respondent, he had demanded the refund of deposits paid by him with interest. On 8.11.96, the petitioner was conveyed sanction of power of 40 HP L.T. supply, which the petitioner did not avail. He continued his correspondence with various authorities in KEB for the refund of amounts he had deposited.

iii) The KEB/KPTCL authorities are still in the process of verifying their records about the deposits paid by the petitioner and received by them. Therefore the petitioner has approached the Commission with this petition.

3. The respondent has put in appearance and has filed the statement of objections. The following points are raised in the statement of the respondent:

i) The alleged claim of the petitioner is highly belated and hopelessly time barred.

ii) The respondent cannot be expected to keep records in respect of cases where no power connection has been obtained for long period like 16 years in the instant case.

iii) The claim of the petitioner is barred by virtue of Order 2 Rule 2 of CPC, since he did not raise this claim along with his other claims in OPNo.23/2003, which was dismissed by the Commission.

- iv) The respondent denies that the petitioner ever made any deposit. He has not produced any receipts and the copies of correspondence produced by the petitioner do not support his claim.
- v) The claim of interest is unsustainable since there was no agreement to that effect when the alleged deposit was made.
- vi) The petition is a shot in the dark since the records pertaining to the alleged deposit are not available with the respondent at this distance of time.

4. We have heard the petitioner and the learned Counsel for the respondent. Though the deposit was made in the year 1987 and 1989, the case is hanging on ever since the first deposit was made. The petitioner faithfully made all the deposits demanded in writing by the respondent without any delay and waited for 3 years. He started demanding the refund of deposit only after giving sufficient time to the respondent to sanction the power. The copies of the correspondence produced by the petitioner are ample proof to show that the case was alive all the years. The copies also reveal that the concerned Superintending Engineer and Chief Engineer have approved the refund and it is pending for approval from the General Manager (Technical). There is no question at this stage of delaying the deposits by the respondent. If the respondent has not kept the records properly, the petitioner cannot be held accountable and he cannot be denied of his claim. There is abnormal delay on the part of the respondent in sanctioning the power and also in processing the refund claim of the petitioner. The provision of CPC quoted by the respondent is not applicable to this case since the claims made in this petition and those made in earlier petition are different from each other. The respondent has taken huge deposit from the petitioner and has kept it with him for a very long period. The petitioner is entitled to refund of deposit as well as interest though not at the rate demanded by him.

5. We see that there is absolutely no defense for the respondent and we have no hesitation in allowing this petition. The respondent shall refund the deposits of the petitioner immediately after deducting 10% of the deposited amount as per Regulation 8.08 of the K.E.R.C. (Electricity Supply & Distribution)

Code 2000-2001. The petitioner is entitled to simple interest at the prevalent bank rate of 6% per annum, on the balance deposit from the date of deposit till the date of payment/adjustment of refund. The refunded deposit and interest thereon may be adjusted against the future energy bills of the petitioner.

6. The petition is **allowed**. It is ordered accordingly.

Sd/-
(Philipose Matthai)

Sd/-
(H.S.Subramanya)

Sd/-
(S.D.Ukkali)