

**Before the Karnataka Electricity Regulatory Commission, Bangalore**

**Dated this the 6th January 2005**

**Present**

- |                                |          |                 |
|--------------------------------|----------|-----------------|
| <b>1. Sri. K.P. Pandey</b>     | <b>-</b> | <b>Chairman</b> |
| <b>2. Sri. H.S. Subramanya</b> | <b>-</b> | <b>Member</b>   |
| <b>3. Sri. S.D.Ukkali</b>      | <b>-</b> | <b>Member</b>   |

**Case No: OP 19/2004**

**Between**

M/s. Kamath Garden Hotel,  
N.D. park Road, Old Town,  
Bhadravathi 577 301.

**Petitioner**

(By Sri K.J. Kamath, Adv.)

**and**

1. The Managing Director,  
MESCOM, Corporate Office,  
Paradim Plaze,  
Mangalore 575 001
2. The Chief Engineer (Elec),  
MESCOM, Corporate Office,  
Paradim Plaze, P.O. Box No. 200,  
A.B. Shetty Circle, Mangalore.
3. The Superintending Engineer (Elec.)  
MESCOM, O&M Circle,  
Shimoga.
4. The Assistant Executive Engineer (Elec.)  
MESCOM (O&M),  
Umblebail Road,  
Bhadravathi 577 301.

**Respondents**

(By Sri S. Sriranga, Adv.)

The Petitioner is running a hotel in Bhadravathi since 1971. In the year 1986, he had started manufacture and sale of ice cream in his hotel, for which purpose he had obtained a separate and dedicated electrical installation bearing RR No. P 296. According to the Petitioner he had used the said electrical installation exclusively for

the manufacture of ice cream. He had three other electrical installations (RR No. L9186 for lighting, P175 for grinder, fridge, water motors and P1030 for bakery), in addition to RR No.296 referred to above. The Petitioner has filed this petition before the Commission pleading that the AEE (Electrical) MESCOM, Bhadravathi has applied LT-3 tariff for RR No.P296 as against LT-5 tariff, which is applicable to electrical installations relating to manufacture of ice cream. Since the Respondents had not considered his plea, the Petitioner had filed a writ petition before the Hon'ble High Court of Karnataka in WP No.34903/2000. The said writ petition was disposed off on 12.07.2001 directing the fourth respondent, that is AEE (Electrical) MESCOM Bhadravathi to consider the matter afresh in the light of the order passed by the Special Investigation Cell. It is mentioned that the Petitioner had approached the Special Investigation Cell constituted by the then KEB for considering his case. The said Special Investigation Cell after considering the case of the Petitioner had passed an order dated 20.05.1999, wherein it had held that LT-5 tariff is applicable in respect of the ice cream manufacturing unit. There upon, the AEE (Electrical) MESCOM, Bhadravathi passed an order refusing to enforce the order of the Special Investigation Cell and applied LT-3 tariff to the ice cream manufacturing unit. Aggrieved by this Order, the Petitioner once again approached the Hon'ble High Court by filing WP No.38809/2001 which was disposed vide order dated 10.01.2002 wherein the Petitioner was directed to file an appeal before the jurisdictional First Appellate Authority. As directed by the Hon'ble High Court, the Petitioner had filed an appeal before the First Appellate Authority i.e., Suptd. Engineer (Electrical) MESCOM, Shimoga. The said appeal was dismissed vide Order dated 26.11.2002. Aggrieved by the above Order of the First Appellate Authority, the Petitioner had filed the second appeal before the Chief Engineer (Electrical) MESCOM, Mangalore on 31.01.2003. The

said appeal is stated to be pending un-disposed. Since there was no order from the Chief Engineer (Electrical) MESCOM, the Petitioner has approached the Commission stating that he has no other remedy except to approach the Commission.

The Petitioner was issued notice for hearing him on admissibility of the petition. The Petitioner's advocate was heard on admissibility. In the course of the hearing, the Petitioner's advocate has filed written arguments wherein he has reiterated the arguments stated in the petition. It is also mentioned that the decision of the Karnataka High Court on similar facts in the case of A Vasanth Pai and others V/s. AEE and others (WP No.28293-28295/1997 judgment dated 20.10.1997 is squarely applicable to the facts of this case. Under these circumstances, the Petitioner has pleaded for admission of his petition.

The Petitioner's plea has been considered carefully. As mentioned above, the main plea of the Petitioner is that the ice cream manufacturing unit in his hotel is chargeable to LT-5 tariff and not LT-3 tariff as adopted by the MESCOM Authorities. The Petitioner had approached the Hon'ble High Court twice on this issue and in the second order, dated 10.01.2002 the Hon'ble High Court had directed the Petitioner to file an appeal before the jurisdictional First Appellate Authority. The First Appellate Authority has since passed the order rejecting the Petitioner's plea. The appeal filed by the Petitioner against this order before the Chief Engineer (Electrical) MESCOM has not been disposed. There is no provision for appeal to the Commission against the order of the First Appellate Authority and therefore the Commission has no jurisdiction in this matter.

In the facts and circumstances of the case, we hold that the petition is inadmissible and is therefore rejected. Ordered accordingly.

Sd/-  
(K.P. PANDEY)

Sd/-  
(H.S. SUBRAMANYA)

Sd/-  
(S.D. UKKALI)