

Before the Karnataka Electricity Regulatory Commission, Bangalore

Dated this the 8th day of January, 2004

Present

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

CaseNo.OP- 31/2003

Between

Prince Plastics,
39/3, Kanakapura Road,
BSK 2nd Stage,
Bangalore - 560 070
Represented by Sri R.Venugopal

Petitioner
(By Sri.A.V.Amarnathan, Adv.)

and

Managing Director,
BESCOM,
K.R.Circle,
Bangalore - 560 001

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

The petitioner is requesting the Commission to invoke *suo motu* powers under Regulation 44(10) of the K ERC (E.S.&D) Code 2000-2001. The facts of this case in a nutshell are as follows:

The petitioner runs a small-scale industry and is a registered consumer bearing RR No.1SP-1566. The installation was serviced on 26.12.1978 with a sanctioned load of 65 HP. The petitioner states that the respondent replaced the meter of his installation with a Tri-vector meter. The Assistant Executive Engineer, Vigilance, inspected this installation and found an excess load of 20.76 HP.

Therefore the installation was back billed for Rs. 1,43, 561/-. The petitioner had approached the Commission for relief. The Commission had transferred this petition to KPTCL with a direction to get it disposed through Appellate Authorities. The First Appellate Authority had admitted this appeal without insisting on the pre-appeal deposit and disposed it after hearing, vide order No.NC/S/172/2001 dated 9.5.2003, partly allowing the appeal. The Authority had set aside the issue of back bill charges but allowed the plea on fixed charges on the excess load of 14.5 HP at twice-normal rates for a period of six months. The petitioner did not file second appeal before the Second Appellate Authority, but has approached the Commission with the present petition, seeking suo motu intervention.

2 It is the case of the petitioner that the First Appellate Authority, after examining two witnesses of the Respondent had orally informed the petitioner that the appeal would be allowed and that there is no need to proceed with the case and that he should file his written arguments. The petitioner claims that the Appellate Authority allowed the case partially and this has put the petitioner in an awkward position, since he could not go in for second appeal, having not led the evidence before the First Authority. Therefore, he contends that the intervention of the Commission is necessary by invoking *suo motu* powers.

3. The respondent has put in appearance and has filed the statement of objections. The respondent has denied all the averments of the petitioner and has stressed the following points:

- i) The order of the First Appellate Authority has no infirmity and is in line with the provisions of the ES & D Code.
- ii) The Appellate Authority gave full opportunity to the petitioner and never stated that it would allow the appeal. The records do not support the averments of the petitioner in this behalf.
- iii) The Circular produced by the petitioner was issued 3 months after the date of inspection and hence not applicable to this case.

4. We have heard both the counsels in full. We have also obtained the case file maintained by the First Appellate Authority and examined the records in detail. Sri. A.V.Amarnathan, learned Counsel for the petitioner, contended that he was misled by the oral assurance of the Authority that it would allow the appeal and that no further evidence is necessary. He argued that he could not prefer the second appeal since he did not lead any evidence before the First Authority. He contended that since the Tri-vector meter records the connected load, there is no need for any inspection and it was done only to harass the petitioner. The readings of the meter prove that the findings of the Vigilance staff are wrong. The Counsel for the respondent argued that the petitioner ought to have exhausted the remedies provided in the ES & D Code and he should have filed a second appeal and explained his case, which he is pleading before the Commission. He further contended that the petitioner is merely asserting that the Appellate Authority made to believe him that his appeal would be allowed. He pointed out that there is no evidence on record to prove the contention of the petitioner. He further stated that the Tri-vector meter does not record the connected load but records the maximum demand. He argued that the petition is premature and without any merit and deserves to be dismissed.

5. We have carefully considered various points urged before us and also examined the records of the First Appellate Authority. A part of the order-sheet of the case before the said Authority is extracted below.

" 25.1.03 The Appellant remained absent even at 3.20.p.m. Sri V.C.Wali, AEE (E) Vigilance attended & has deposed before the Authority. Sri G.N.L.Naikar AAO also attended. The Appellant remained absent even after adjourning the case. However, the case is finally posted for hearing to 31.1.03 at 12.00 noon. The notice served to the Appellant through sub-division. The inspecting officer informed about the next date of hearing.

(Signatures)

31.1.03 The Appellant's advocate attended. Sri V.C.Wali, AEE(E)/Vig. and Smt.Dayarani, Sr. Asst., attended. The Counsel for appellant has agreed to submit his final statement by 5.2.03. The case listed for orders.

(Signatures)"

The Counsel for the Appellant filed statement on 6.2.03. The following is the extract from his final statement

" A copy of the order passed by K ERC directing to prefer appeal, without the deposit is herewith produced. The Appellant had also replied to the notice of back billing. A copy of the said letter is also herewith produced.

The reply of the Appellant and the orders of K ERC is self explanatory. No evidence is required further."

The above extract shows that the Counsel for Appellant agreed to file his final statement. He also signed the order sheet. He filed his final statement also, and stated that no evidence is required except the two documents produced by him. The averments of the petitioner in the final statement before the Appellate Authority that no evidence is required is undoubtedly voluntary and there appears to be no compulsion on him not to lead any evidence from his side. Moreover, he has not raised any objection before the said Authority regarding the manner in which the proceedings were conducted. He cannot find fault with the proceedings before the Commission, at this point of time. He could have appealed before the Second Authority, if he was not satisfied with the outcome before the First Authority.

6. Under these circumstances, we do not accept the contention of the petitioner that he was made to believe that his first appeal would be allowed and that he need not lead the evidence of his side. Thus, we see no reason to invoke the *suo motu* powers to intervene in the proceedings.

7. The petition is **rejected**. It is so ordered. No costs.

(Philipose Matthai)

(H.S.Subramanya)

(S.D.Ukkali)

