

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

**Dated this the 1<sup>st</sup> day of July 2004**

**Present**

- |                                  |          |                 |
|----------------------------------|----------|-----------------|
| <b>1. Sri. Philipose Matthai</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 10/2004**

**Between**

Sri. A.V. Makwana  
by his GPA holder Sri S.C.Itagi,  
Vijaya Building,  
Vidyanagar, Old ITI Road  
Hubli - 580 021.

**Petitioner**

**and**

1. The Managing Director,  
HESCOM  
Eureka Junction, 2<sup>nd</sup> Floor,  
Travelers Bungalow Road,  
Deshpande Nagar,  
HUBLI - 580 029
2. Chief Engineer,  
HESCOM  
Navanagar,  
HUBLI
3. Asst. Executive Engineer, (Ele),  
O & M Sub-division NO.1,  
HESCOM  
HUBLI.

**Respondents**

(By Sri S.Sriranga, Adv.)

The Petitioner is aggrieved by the orders of the First Appellate Authority dated 23.3.1999 bearing No. CEH/A11/9735, confirming the back billing charges to the tune of Rs.2, 63,250/- levied against the petitioner for unauthorized

extension the power to 9 flats of the multistoried building. The Petitioner is seeking refund of excess amount deposited by him with interest with a time frame.

2. The facts of this case, in a nutshell, are as follows. -

The Petitioner is a builder and developer. He had availed temporary power supply for construction purposes under RR.No. TL-3059/P4 to the extent of 2 kW on 29.11.1997. On 22.1.1998, the Vigilance staff of the Respondents inspected this installation and found that the temporary power supply was extended without any authorization to nine flats at the rate of 2 kW per flat. Therefore the Respondent No. 3 levied a back bill for Rs. 2, 63,250/-. The Petitioner filed first appeal to the First Appellate Authority after depositing 25% of the bill amount. The First Appellate Authority dismissed the appeal and confirmed the back bill. There after, the Petitioner filed a second appeal before the Second Appellate Authority against the orders of the First Appellate Authority. The Second Appellate Authority dismissed the second appeal on 24.1.2000 and confirmed the decision of the First Appellate Authority. The Petitioner filed Writ Petition No.7054/2000 before the Hon. High Court of Karnataka against the decisions of the Appellate Authorities. The Hon. High Court rejected the writ petition by its order-dated 13.3.2000. The Petitioner filed second Writ Appeal No.1884/2000 before the Hon. High Court, which he withdrew to take benefit under the 'Samadhan' scheme of KPTCL. He filed an undertaking on 29.3.2000 before KPTCL authorities that he would pay the arrears in one lump sum and withdraw the writ appeal before the Hon. High Court. The Writ Appeal also came to be dismissed as withdrawn. The Petitioner did not receive any benefit from the 'Samadhan' scheme and therefore he filed a petition to the corporate office of KPTCL on 13.5.2002. The General Manager (Tech) of KPTCL through his letter dated 4.6.2002 asked the Petitioner to approach the Second Appellate Authority. Since the second appellate authorities are not functioning, the petitioner has filed the present petition before the Commission.

3. The Respondents have put in appearance and have filed detailed statement of objections. The main objection to the petition is that the petitioner cannot file a petition or appeal before the Commission against the orders of the First Appellate Authority since the matter has attained finality after the decisions of Second Appellate Authority and the Hon. High Court. They have pointed out that the Petitioner has suppressed the fact of Hon High Court dismissing his Writ Petition and Writ Appeal. They have produced the copies of the decision of the Hon High Court and the undertaking of the Petitioner not to raise further disputes or appeals or go to Court.

4. We have heard the Petitioner and the learned Counsel for the Respondents. Both the Petitioner and the learned Counsel for the Respondents have filed their written arguments as well. The Petitioner contended that the unauthorized utilization lasted only for 55 days and the Respondents have back billed him for six months. He did not dispute the unauthorized extension or his liability to pay penalty for such lapse. He further contended that he filed application under the 'Samadhan' scheme, but his request has not been favourably considered. He stated that the General Manager (Tech) of the corporate office of KPTCL directed him to approach the Second Appellate Authority and that since the Second Appellate Authorities are not functioning; he is forced to approach the Commission for seeking justice. Sri S.Sriranga, learned Counsel for the Respondents argued that the Petitioner has exhausted all remedies and the case has attained finality after the decisions of the Hon High Court, which has dismissed the writ petition and writ appeal of the Petitioner. He contended that there is no provision to re-agitate the matter before the Commission.

5. We have carefully considered the points urged by the Petitioner and the learned Counsel for Respondents. We have also gone through the written submissions made by them. The only point being urged by the Petitioner is that he has been excessively penalized by back billing for six months instead of 55 days. He had raised this issue before the two appellate fora without any success.

Thereafter he had approached the Hon High Court of Karnataka with a writ petition challenging the decisions of the Appellate authorities, without any success. He filed a writ appeal against the decision of the Hon High Court but had withdrawn it to avail the benefit of Samadhana scheme. Thus the writ appeal also got dismissed. With the decisions of the Hon High Court, the matter has attained finality and the Petitioner cannot raise the same issue before the Commission. The decisions of the Hon High Court are also binding on the KPTCL and they could not have asked the Petitioner to approach the Second Appellate Authority. Therefore we agree with the Counsel for Respondents that the matter has attained finality and it cannot be re-opened.

6. The copies of the documents produced by the Respondents show that the Petitioner withdrew the writ appeal before the Hon High Court with an intention to avail the benefits under the Samadhana scheme. He gave an undertaking also to the effect that he would pay the outstanding arrears relating to his installation. From the copies of the documents produced by the Petitioner, it is seen that the concerned Asst. Executive Engineer duly processed his application for the Samadhana Scheme, and the Petitioner was to get the benefit of a waiver of interest to the tune of Rs. 85,296/-. However for mysterious reasons the sanctioning authority (Chief Engineer) did not pass the final orders granting this benefit to the Petitioner. The learned Counsel for the Respondents could not throw any light on the reasons why the benefits of Samadhana Scheme were not given to the Petitioner though he was made to withdraw his writ appeal before the Hon High Court, on this understanding. Had this been done, the Petitioner would not have approached the KPTCL authorities or this Commission with this petition. This is a good example as to how the schemes brought out with good intentions to help the consumers, are defeated by the shoddy implementation by the concerned personnel. We, therefore, direct that the Respondents should settle the case of the Petitioner under the Samadhana scheme within 3 weeks from the date of receipt of this order. The Petitioner is free to approach the Commission on this specific issue, if necessary.

7. We therefore, **dispose** this petition on the lines stated above. It is so ordered.

**(Philipose Matthai)**

**(H.S.Subramanya)**

**(S.D.Ukkali)**