

Before the Karnataka Electricity Regulatory Commission, Bangalore

Dated this the 4th day of November 2004

Present

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

Case No: OP - 13/2004

Between

Sri R.T.Habeeb,
Prop. M/s Shakti Industries,
Domgere,
Yellapur Taluk,
U.K.District

Petitioner
(In person)

and

1. Managing Director,
HESCOM,
Hubli
2. The Asst Exe. Engineer (Elec)
HESCOM
Yellapur
3. The Asst Exe Engineer (Elec)
(Vigilance)
HESCOM)
Hubli.

Respondents
(By Sri S. Sriranga, Adv.)

This Petition has been admitted for hearing by the Commission, under Regulation 44.10 of the Karnataka Electricity Regulatory Commission (E.S.& D) Code 2000-2001. The facts of this case, in a nutshell, are as follows. –

The Petitioner runs a distillery unit named as M/s Shakti Industries. He is a registered consumer of the Respondents having RR No. MRMP 3 and M-28, with sanctioned load of 40 HP. The Petitioner had leased a portion of his premises to one M/s SPR Industries on 1.5.1996, another distillery industry. The Petitioner had composite distillery license, which was split into primary distillery and IML distillery and renewed on 19.7.1997 and was permitted to sub lease the manufacture & bottling of IML in favour of M/s SPR industries. The installation of the Petitioner was inspected by the Asst Executive Engineer, MT Sub Division on 16. 9.1997 and no irregularities were noticed. However, the installation was inspected by Asst Executive Engineer (Vigilance) on 22.10.1997, and it was found that the Petitioner had unauthorisedly extended the power supply to M/s SPR Industries. The Asst. Exe.Engineer instructed the back billing as per clause 44.06 of the Code. The jurisdictional Asst. Exe. Engineer back billed the Petitioner under clause 44.07 for Rs.9, 15,375/-. The Petitioner filed a writ petition before the Hon. High Court of Karnataka, against the back bill. The Hon High Court directed that the Petitioner might deposit Rs. 1, 50, 600/- and file an appeal before the 1st Appellate Authority. Accordingly the Petitioner filed the appeal before the 1st Appellate Authority, which partly allowed the appeal and reduced the back bill to Rs. 3,25,377.45. Aggrieved by this order the Petitioner has approached the Commission since the 2nd Appellate Authorities are not functioning in the State. It is contended by the Petitioner that the learned 1st Appellate Authority erred in calculating the back bill from 1.5.1996, the date of leasing the premises to SPR industries, though the distillery license was granted to SPR industries from 19.7.1997.

2. The Respondents have put in appearance and have filed their statement of objections. The Respondents claim that there is no infirmity in the order of the 1st Appellate Authority, as it is based on the report of the Asst. Exe. Engineer (Vigilance). They further contend that the distillery license of the Petitioner was renewed on 19.7.1997 and he had the license earlier also. They argued that M/s SPR industries had taken the lease of the premises from 1.5.1996 and the unauthorized extension existed from that date onwards.

3. We have heard the Petitioner in person and Sri. Sriranga, learned Counsel for Respondents. We have also examined the various documents produced by the Petitioner. The Petitioner and the learned Counsel for the Respondents generally contended what is stated in the above paragraphs. We have carefully considered various points urged before us with reference to the documents produced before us. We find that it is a fact that the Petitioner had leased his premises from 1.5.1996 to M/s SPR industries. However, the installation was first inspected on 16.9.97 by the authorities of MT sub division on 16.9.97 and no irregularities were noticed. The vigilance authorities inspected the installation on 22.10.1997 and found that 50 kW power was unauthorizedly extended to M/s SPR industries. The vigilance authorities had inferred that the load was extended from 1.6.1996 itself. This inference is wrong in view of the earlier inspection report of MT sub division on 16.9.1997. The Petitioner has produced the copy of the distillery license renewed on 19.7.1997. This document reveals that the Petitioner was permitted to split his composite license and sublease a part of it to M/s SPR industries to manufacture and bottling of IML. The report of MT sub division and the splitting of license in favour of SPR industries conclusively prove that the unauthorized extension could be from 19.7.1997 and not earlier. Therefore, we conclude that the calculation made in the order of the 1st Appellate Authority is not correct since the period of back bill is considered from 1.5.1996 ignoring the report of the MT sub division which was much later and no irregularities were reported at that time. We also hold that the back billing of the installation has to be from 19.7.1997 to 22,10.1997, under clause 44.06 of 1988 code.

4. Therefore, in exercise of powers in Regulation 44.10 of the KERC (ES &D) Code, 2000-2001, we direct the jurisdictional Asst Exe.Engineer to calculate the back bill of the Petitioner, as indicated above and revise the demand. If it is found that the Petitioner has paid excess amount than this revised bill, it should be adjusted in the future bills of the Petitioner's installation. We also direct the jurisdictional Asst. Exe. Engineer to give an opportunity of being heard to the Petitioner before the revised bill is finalized. We also grant leave to the Petitioner

to approach the Commission, if need be. We also direct Respondent No.1 to take cognizance of the mistake committed by the then jurisdictional Asst. Exe Engineer who had booked the demand under clause 44.07 instead of clause 44.06 of the relevant code, contrary to the vigilance report.

5. In view of he above, we **allow** the petition. Ordered accordingly.

sd.

(Philipose Matthai)

sd.

(H.S.Subramanya)

sd.

(S.D.Ukkali)