

Before the Karnataka Electricity Regulatory Commission, Bangalore

Dated this the 4th 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 - 16/2004

Between

Sri Ashok Neeli s/o Rajashekharappa,
Agriculturist,
Baradan Galli,
Hubli

Petitioner

(By Sri Basavaraj Bannur, Adv)

and

1. Managing Director,
HESCOM,
Hubli

2. Asst Exe Engineer (Elec)
Vigilance Squad,
HESCOM,
Hubli.

3. Superintending Engineer (Ele),
& Appellate Authority,
HESCOM
Hubli

Respondents

(By Sri S.Sriranga, Adv.)

We have admitted this petition to be heard under Regulation 44.10 of the Karnataka Electricity Regulatory Commission (ES & D) Code, 2000-2001, after hearing the learned Counsel for the Petitioner.

2. The facts of this case, in brief, are as under. -

The Petitioner is an agriculturist and has installed an irrigation pump set. He is a registered consumer of the Respondent having RR No 3365:MP 6 with a sanctioned load of 6 hp. It is stated that the Respondent No.3 made a surprise inspection of this installation on 21.5.1999 and found that there was a welding machine of 5 kVA and a shed under construction. The vigilance authority considered that the power was used for welding machine and also for drawing water for construction of the shed and therefore the Petitioner was back billed for Rs. 2, 08,235=45 for the alleged misuse. The Petitioner preferred an appeal before the 1st Appellate Authority, who partly allowed the appeal and the back bill was revised to Rs. 1, 27,899/-. The Petitioner is aggrieved by this order and has approached the Commission.

3. The Petitioner contends that the Vigilance Officer was not summoned and examined before the Appellate Authority despite repeated requests of the Petitioner and he did not have the opportunity to cross examine him. He further states that the back bill has been issued based on the inspection report of the vigilance squad and there are no supporting documents to prove the inspection report. He further contends that he has given documentary evidence to prove that he had hired an agency to supply water for construction of the shed and also for the fabrication work, which were not considered. He pleads that the back bill is prepared on the basis of presumption of misuse and ignoring the evidence produced by him to the contrary.

4. The Respondents have put in appearance through their counsel and have opposed this Petition contending that the presumption made for the alleged misuse is correct since no other inference can be drawn for the presence of the welding machine and production of documents at a later date is an after-thought.

5. We have heard Sri Basaaraj Bannur, learned Counsel for the Petitioner and Sri S.Sriranga, learned Counsel for the Respondents. We have also considered the documents produced by the Petitioner. Sri Bannur contended that the vigilance squad drew no mahazer at the time of inspection and the welding machine was never connected to the installation. He argued that there is no evidence to prove that the irrigation pump set was ever used to supply water for the construction of the shed. He stated that the alleged misuse based on the presumption is arbitrary and cannot be sustained under any law. He requested the Commission to intervene and set aside the back bill that has no basis. Sri Sriranga, learned advocate contended that the Petitioner has acknowledged the vigilance report and he was present at the time of inspection. He argued that there is no need for any mahazer. He further argued that the presence of the welding machine could not be inferred in any other way than for having brought for fabrication work. He stated that the receipts produced by the Petitioner for the fabrication work and for the supply of water are afterthought and cannot be relied upon.

6. We have carefully considered the various points urged before us. Admittedly, no mahazer was drawn at the time of inspection by the vigilance authorities. There is no proof to show that the welding machine was ever used for fabrication purposes and for the irrigation pump set used for drawing water for construction of the shed. The orders of the Appellate Authority, the inspection report are based on the presumption of misuse as stated therein. The licensee cannot penalize the consumer on the basis of presumption. It is not only unethical but also unsustainable in law.

7. Therefore, we are convinced that this is a fit case to intervene by exercising the *suo motu* powers under Regulation 44.10 of KERC (ES & D) Code, 2000-2001, and hold that the inspection report without the support of a mahazer, and based on the presumption of misuse is bad in law and cannot be acted upon. Consequently the back bill, which is based on such report, cannot be enforced on the Petitioner. We also hold that the Petitioner is entitled to the

refund of any payments/deposits made by him as a consequence to the said back bill. Such refund may be adjusted against the future bills of the installation.

8. In view of the above, we **allow** the petition and order accordingly,

sd.

(Philipose Matthai)

sd.

(H.S.Subramanya)

sd.

(S.D.Ukkali)