

No.N/31/11

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 11th August 2011

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| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri Vishvanath Hiremath | Member |
| 3. Sri K. Srinivasa Rao | Member |

Complaint No. 02/2011

Between

M/s. Federation of Karnataka Chambers of
Commerce and Industry (FKCCI)
'Federation House', K.G. Road
BANGALORE – 560 09
(Represented by its Advocate Sri Shridhar Prabhu) ... Petitioner

Vs.

Bangalore Electricity Supply Company Limited
'K.R. Circle'
BANGALORE – 560 001
(Represented by its Assistant Law Officer) ... Respondent

1. The Vice President of Karnataka Small Scale Industries Association (hereinafter referred to as KASSIA) had addressed a letter to the Commission dated 8.4.2011 complaining against the action proposed in a letter circulated by Bangalore Electricity Supply Company Limited (hereinafter referred to as BESCO) among some of its members who are industrial consumers. The action proposed in BESCO's letter consisted of the following reduction in the power supplied to industries with a view to enable uninterrupted power supply to domestic consumers.

- (1) Voluntary reduction in the consumption of power for the industrial consumer up to 30 %. This will reduce the demand by 300 MW. Thus there will not be any requirement for power cut to the domestic consumers.
- (2) The voluntary reduction of power period will be given for one week, starting from 21st March 2011 till 1st of April 2011. If by 1st April 2011 the voluntary reduction in the consumption does not yield required results, then option 2 will be implemented. In option 2 selected industries will be requested to curtail their demand during the peak hours i.e. 6.00 pm to 10.00 pm.
- (3) If option 2 also does not bring down the consumption by 300 MW then BESCO is proposing blanket power shut down of Industrial feeders from 6.00 pm to 10.00 pm.

2. It is alleged that the said letter was circulated among several industrial members of FKCCI and KASSIA, after an interaction meeting held with them by BESCO on 17.3.2011. KASSIA has further stated in its letter that BESCO or ESCOMs cannot resort to load shedding without prior permission from this Commission under Section 23 of the Electricity Act, 2003. They had also sought a personal hearing on their grievance.

3. Since the issue raised by KASSIA was of general interest relating to industrial consumers, the above letter was treated as an application under Section 23 of the Electricity Act, 2003. After hearing the preliminary submissions on behalf of KASSIA, a notice was ordered to be served on BESCO.

4. On receipt of notice BESCO has appeared through its counsel and filed its response to the application.

5. FKCCI has also filed another petition Complaint No.2/2011 alleging violation of Section 23 of the Electricity Act, 2003 and the orders passed by the Commission in the Tariff Order dated 7.12.2010 punishable under Sections 142 and 146 of the Electricity Act, 2003.

6. As the issues raised by KASSIA & FKCCI emanated from the very same undated and unsigned letter of BESCO the two petitions were heard together with the consent of the parties.

7. The counsel appearing for KASSIA as well as FKCCI have strongly submitted that BESCO in issuing the letter proposing power cuts has violated the orders of this Commission dated 26.8.2010 and also the tariff order dated 7.12.2010 wherein BESCO is directed to prepare and publish weekly feeder / substation-wise supply schedules with effect from 1.1.2011 and report compliance to the Commission. Thereby BESCO has become liable to be punished under Section 142 & 146 of the Electricity Act, 2003.

It is also contended that in view of Section 23 of the Electricity Act, 2003, BESCO cannot announce a scheduled load shedding without prior permission of the Commission. The impugned letter which announces

the proposed load shedding without the approval of the Commission amounts to violation of Section 23 of the Electricity Act, 2003.

8. In reply it is submitted on behalf of BESCO that there is no violation of either Section 23 of the Electricity Act, 2003 or the orders of this Commission by the impugned letter as the same was only a proposal for which consent of the industries was sought and at any rate the same has not been acted upon and has become infructuous on the expiry of the period for which the proposal was made. It was clearly brought out that there was no intention to implement the plan in future also.

9. We have considered the respective oral and written submissions of all the parties.

10. At the outset, we are constrained to observe that the letter in issue is not happily worded. It is on account of this reason that apprehensions appear to have been created in the minds of the petitioners. BESCO's letter does not give any indication of its intention to obtain the Commission's approval for the proposed measures and as such it appears to have lead the petitioners to conclude that the proposed power cuts were likely to be imposed without the Commission's approval. Therefore we feel KASSIA & FKCCI's contentions are not without basis. However the question that needs to be considered in this case is whether the letter per se violates Section 23 of the Electricity Act, 2003 and any of the orders of

the Commission so as to invite initiation of action under Sections 142 & 146 of the Electricity Act, 2003.

11. In our opinion, in issuing the letter in question, BESCO has not violated Section 23 to attract Section 142 or 146 of the Electricity Act, 2003. Admittedly the letter is only a draft and has been circulated for acceptance by the industries. This is made clear by BESCO in its reply at Para (3) as under :

“The grievance of the Petitioner in the proceedings is the appeal to the consumers by Respondent. The Respondent has issued a letter to the industrial consumers after having personal interaction with associations of whom industrial consumers are members. The Respondent has from time to time initiated measures to bridge the gap between demand and supply of electricity in its jurisdiction. The appeal which is impugned in the present proceedings is one such measure. The appeal provides greater details of the power situation in the jurisdiction of the Respondent. It is an attempt to apprise its consumers of the power situation and to seek their cooperation in effective load management. It is an attempt to undertake demand side management. A perusal of the appeal would show that a request has been made to the industrial consumers to voluntarily reduce consumption of power by 30 % so that the demand could be reduced by 300 MW during the peak hours between 6 to 10 PM. In fact before the appeal was even circulated, the Petitioner organization was also consulted. The whole idea behind this

entire exercise was to ensure that domestic consumers would also be provided adequate power supply during the period when students are having examinations".

12. During the course of the hearing, BESCO has also filed a memo dated 30.6.2011 in which it has specifically stated that BESCO has taken measures to keep the consumers informed about the scheduled power outages. Further, it has produced copies of notifications issued on various dates in the newspapers in support of the said statement. This, in our view, substantially complies with the direction issued. However, we have directed that the notifications issued in the press in future shall contain some more details as the notifications now issued are rather bald in nature.

13. In order to make out a case for punishment under Sections 142 or 146 of the Electricity Act, 2003, the complainants have to show how BESCO has violated Section 23 of the Act or Orders of this Commission, more so when the letter proposing power cuts has not been acted upon. The Learned Counsel appearing for KASSIA argued that the letter is an attempt to violate Section 23 of the Act and hence it attracts Section 146 of the Act. We are not impressed by this argument which has to be rejected for the reasons stated above. Various judgments cited by the Petitioner's Counsel, therefore need not be referred to.

14. Before parting with these proceedings, we observe that BESCO could have avoided this episode if only it had properly worded its letter in question and had acted with due appreciation of the observations made by this Commission in its Order dated 26.8.2010. This Commission at Para (13) of the order has observed that –

“Though we have held that the respondents have the functional responsibility to adjust the demand and supply considering the availability of power which confers the associated right to them, it should not be taken to mean that they can resort to curtailments of power supply without following any procedure and without informing the consumer public from time to time. The notification of the schedule of availability of power by the Distribution Licensees cannot be a one-time affair. This requires to be done at regular intervals to enable consumers to adjust their affairs accordingly”.

15. Further, this Commission in its Tariff Order dated 7.12.2010 has also directed that –

“The Commission therefore directs BESCO to prepare and publish its weekly feeder / substation wise supply schedules with effect from 1.1.2011 and report compliance to the Commission. The Commission also directs that BESCO shall submit to the Commission, by the 10th of every month, a report Distribution Zone wise, on the number and duration of interruptions in supply during the previous month with reasons”.

16. In the above circumstances, we once again direct that BESCO shall take action to keep the consumers informed sufficiently in advance, on a weekly basis, of any load shedding proposed in the following week to enable consumers, particularly industrial consumers, to plan their production and maintenance activities suitably. It shall also coordinate suitably with the State Transmission utility so that any interruptions in power supply on account of scheduled maintenance of transmission lines is also notified in advance to the consumers as mentioned above.

17. The petitions are disposed of with the above directions.

Sd/-
(M.R. SREENIVASA MURTHY)
CHAIRMAN

Sd/-
(VISHVANATH HIREMATH)
MEMBER

Sd/-
(K. SRINIVASA RAO)
MEMBER