

No.N/57/11

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated : 29th March, 2012

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

Complaint No. 8/2011

BETWEEN

Vishwas Construction Industries Private Ltd.
Registered Office
No.80/85, 3rd Main Road
New Tharagupet
BANGALORE – 560 002
(Represented by M/s. Shridhar Prabhu Associates,
Advocates)

... **Complainant**

AND

Bangalore Electricity Supply Company Limited
Registered Office
K.R. Circle,
BANGALORE - 560 001
(Represented by M/s. Just Law, Advocates)

... **Respondent**

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1. The Complainant has filed this Complaint under Section 57(2) of the Electricity Act, 2003, praying for directions to the Respondent to:

- (a) pay compensation in various sums (mentioned therein) towards (i) cost of generation by Diesel Generating Set from the date of maintenance of records; and (ii) load sheddings, etc.;
- (b) refund of excess deposit with one percent interest per month;

- (c) compensation with one percent interest towards fixed cost of installing Diesel Generating Sets; compensation equal to the fixed charges paid by the Complainant from the date of service (of DG sets);
- (d) penalty for each day's delay for not following the directives of the Commission under the Tariff Order, 2010;
- (e) penalty for providing the wrong Reliability Index to the Commission.

2. The averments made in the Complaint, in brief, are as follows :

(a) The Complainant is a Consumer of the Respondent-Bangalore Electricity Company Limited (BESCOM) under HT 2A Category. The Complainant owns and operates a Quarrying and Stone Crushing Unit in Chikkanagavalli Village, Chickballapur District, located at a distance of 5 KMs from Peresandra MUSS, operated by the Karnataka Power Transmission Corporation Limited (KPTCL). The Complainant had carried out the Service Line work under self-execution for power supply to its Unit for 750 kVA. On the request of the Complainant, a Metering Cubicle was installed at MUSS for easy meter reading. It is contended by the Complainant that while sanctioning power supply, a sum of Rs.78,732/- was paid as supervision charges to KPTCL's portion of work, as instructed by the Respondent, but, however, the amount was not transferred by the Respondent to KPTCL. The Complainant, vide letter dated 23.6.2008, requested the Executive Engineer of the Respondent-Company to transfer the amount to KPTCL and the Licenced Contractors if the Complainant wrote a letter dated 13.8.2008 to the Complainant to reimburse the Inspection Fees paid to various authorities, amounting to Rs.24,350/-.

(b) It is further alleged by the Complainant that since 21.7.2007, i.e., the date of sanction of power supply, it has faced severe unscheduled load

shedding for 4 to 5 hours per day, causing severe damages to its machinery and motors, and that several representations made to the Respondent in this regard have not yielded any result. It is further alleged that even during the period when power was supplied, there were voltage variations, because of which the Complainant was forced to purchase a 625 kVA capacity Diesel Generator Set at a total cost of Rs.33,20,803/- and operate the same at a cost of Rs.11.6 per Unit. It is further contended by the Complainant that as there was a variance in the power factor recorded in the Bill for the month of July, 2009, the Complainant made a request to conduct testing of the Meter and that though a rating of the installation was made by the Respondent, the Respondent did not agree to change the Meter. Thereafter, the Complainant experienced unscheduled load shedding for 6 hours per day, as per the Log Book for the period from 1.3.2010 to 24.3.2010 produced by the Complainant.

(c) It is further alleged by the Complainant that the interruptions in power supply caused are in violation of the Electricity Act, 2003, KERC (Licensees' Standards of Performance) Regulations, 2004, Tariff Orders and other Directives of the Commission and the National Electricity Policy. The Complainant has further alleged that the Reliability Index published in the Website of the Commission is wrong and baseless, as the same is not supported by evidence and that the Commission was not provided with any data by the Respondent. Hence this Complaint. The Complainant's Counsel has produced the opinion of the learned Attorney General of India given on the interpretation of Section 57(2) of the Electricity Act, 2003, in support of the Complainant's claim for compensation.

3. The Respondent-BESCOM has put in appearance through its Advocates, M/s. Just Law and filed its Statement of Objections on 13.1.2012, denying all the averments made by the Complainant in the Complaint and requesting for dismissal of the Complaint on the following grounds:

- (a) The Complaint is devoid of merits;
- (b) The Complainant has not specified as to which provision of law or regulation has been violated by the Respondent;
- (c) The Complainant has failed to make out a case against the Respondent as to how the standards specified by the Commission have been violated by the Respondent;
- (d) Even if all the contentions of the Complainant made in the Complaint are admitted to be true, the Complainant has not made out a case for grant of compensation under Section 57 of the Electricity Act, 2003;
- (e) If there were unscheduled power interruptions, as alleged by the Complainant, the same could be attributed to the load management measures being imposed by the State Load Despatch Centre;
- (f) According to the Complainant itself, the Log Book giving details of load shedding maintained by the Complainant is not comprehensive and hence, the Log Book of the Complainant cannot be relied upon;
- (g) The Respondent is complying with all the requirements stipulated in the Regulations and the Act;
- (h) Respondent has furnished all the required data to the Commission regarding the number and duration of interruptions in power supply

and hence the Respondent is not liable to be levied with penalty under Section 142 of the Act.

4. Before considering the Complaint on merits, the Advocate for the Respondent submitted that the very Complaint is not maintainable, in view of the orders of the Commission passed in Complaint Nol.1/2011, wherein it is held as under :

“10. The complainant in his complaint has not brought out which of the standard of performance which has not been met by BESCO. Unless the complainant makes out that a particular standard of performance specified by this Commission has not been met by BESCO no compensation can be claimed. Further, the complainant, except for listing out items damaged and making a general claim that he has suffered a loss of Rs.10,36,900/-, has not produced any material evidence such as purchase vouchers / repair vouchers, etc., of the goods damaged in support of the amount claimed. In our view the complaint filed in the present form cannot be accepted and payment of compensation cannot be ordered by this Commission which can only look into cases of failure to comply with standards of performance under Section 57(2) and not go into claims arising out of variation or disruption in supply.

11. Our not entertaining the complaint, however, shall not prejudice the right of the complainant to approach an appropriate forum such as Consumer Grievance Redressal Forum for claiming compensation by producing proper and material evidence. CGRF under the provisions of the Electricity Act, 2003, is sufficiently empowered to verify the documents of the complainant and after hearing both the parties order payment of compensation in accordance with law. In the alternative, the complainant may also lay his claim before the consumer courts established under the Consumer's Protection Act as Section 173 of the Electricity Act, 2003 specifically protects the right of the consumer under the Consumer Protection Act 1986. With the above observations, this complaint stands disposed off.”

5. The Complainant's Counsel also fairly submitted that in view of the decision of this Commission in Complaint No.1/2011, this Commission may be pleased to decide the maintainability of the Complaint under Section 57(2) of the Electricity Act, 2003, and only if it is held that the Complaint is maintainable, then the parties may be heard on merits of the claim made by the Complainant.

6. We have considered the preliminary issue raised on behalf of the Respondent in the light of the averments made in the Complaint and the oral arguments addressed by both the Counsels on the same.

7. In order to find out whether the Complainant has made out a case to consider award of compensation under Section 57(2) of the Electricity Act, 2003, we have gone through every paragraph of the Complaint. However, we have not been able to find out any ground which can support the claim of the Complainant.

8. This Commission in Complaint No.1/2011, decided on 22.12.2011, has considered the scope of Section 57(2) of the Electricity Act, 2003. After extracting Section 57(2), this Commission has held as follows :

“9. As per the above provision, a person who claims compensation has to establish that –

- (i) the licensee has failed to meet the standards specified by the Commission under Sub Section (1) of Section 57 of the Electricity Act, 2003; and
- (ii) on account of such failure he has suffered loss which needs to be compensated.”

9. The Standard of Performance Regulations framed by this Commission under Section 57(1) of the Electricity Act, 2003, nowhere

states that the power supply has to be uninterrupted. Further, this Commission has not prescribed any standards on the Reliability Indices. The allegation of the Complainant is mainly on power interruptions. The Respondents, in their Counter, have stated that the power interruptions were due to the System constraints, on which they have no control. As this Commission has not prescribed any Standard of Performance so far as continuity of power supply is concerned, there cannot be any breach of any standard of performance so as to give a cause of action to the Complainant under Section 57(2) of the Electricity Act, 2003, to claim compensation.

10. In our view, while there may have been interruptions in supply of electricity, which has caused inconvenience to the Complainant, this Commission, under Section 57(2) of the Electricity Act, 2003, cannot consider award of any compensation to the Complainant, unless a clear breach of the Standard of Performance Regulations has been pointed out. Therefore, we are in agreement with the preliminary issue raised by the Respondent that the Complaint itself is not maintainable under section 57(2) of the Electricity Act, 2003, as the Complainant has not made out a case of violation of Standards of Performance prescribed by this Commission under Section 57(1) of the Electricity Act, 2003.

11. The learned Counsel for the Complainant has produced a copy of the Legal Opinion furnished by the learned Attorney General of India to the Central Electricity Regulatory Commission on Section 57 (1) and (2) of the Electricity Act, 2003. The learned Attorney General of India has opined that no standard compensation can be prescribed under Section 57(2) of the Act in view of the specific wordings of the said Section, which contemplates determination of compensation on a case-to-case basis.

Therefore, in our view, the opinion of the learned Attorney General of India will not, in any way, advance the Complainant's case, as the Complainant has not pointed out any specific Standards of Performance prescribed by this Commission under Section 57(1) of the Electricity Act, 2003, that have been violated by the Licensee (Respondent), so as to maintain the present claim for compensation.

12. In the light of the above discussions, we hold that the Complaint is liable to be dismissed on the preliminary ground, that it does not satisfy the requirement of Section 57 of the Electricity Act, 2003, for consideration of award of compensation, and accordingly the Complaint is dismissed. However, before parting, we would like to direct the Respondent that within the limitations of the availability of power and the constraints of the network, they should strive to minimize interruptions in supply of power to this industrial unit located in a rural area.

No orders as to costs.

Sd/-	Sd/-	Sd/-
(M.R.SREENIVASA MURTHY)	(VISHVANATH HIREMATH)	(K.SRINIVASA RAO)
CHAIRMAN	MEMBER	MEMBER