

**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 |

Case No. D/07/06

Between

M/s. Bidar Rubber & Reclaims Pvt. Ltd.
Plot No.24-28, Industrial Area, Naubad
B I D A R – 585 403
(represented by its Advocate Sri A. Nagaraja Naidu) ... Petitioner

Vs.

1. Gulbarga Electricity Supply Company Limited
Station Road
GULBARGA – 585 101
2. The Karnataka State Industrial Infrastructure
Development Corporation Ltd.
49, 4th Floor, East Wing, Khanija Bhavan
Race Course Road (Devaraj Urs Road)
BANGALORE – 560 001
3. Gulbarga Electricity Supply Company Limited
O&M Sub Division (AEE-EI)
BIDAR – 585 401 ... Respondents
(Represented by Just Law Advocates for 1st & 3rd
Respondents and Sri M.K. Girish, Advocate for
the 2nd Respondent)

1. The Hon'ble High Court of Karnataka, vide its Order dated 6.12.2010
in WP No. 40148/2008, has passed the following order :

“Though the Karnataka Electricity Regulatory Commission (KEREC) is not a party to this proceeding, I think it appropriate to direct BRRPL and the KSIIDC to pursue with the said authority to take a decision over their representations which I have no reason to believe will not be done, as expeditiously as possible, in any event within a period of two months from the date of receipt of a copy this order, BRRPL is further directed to furnish a copy of this order to KEREC for compliance. All contentions of both the parties, i.e., BRRPL and KSIIDC are kept open for decision making by the KEREC”.

2. In pursuance of the above direction, the Karnataka State Industrial Infrastructure Development Corporation Limited (hereinafter referred to as KSIIDC) and M/s. Bidar Rubber and Reclaims Private Limited (hereinafter referred to as 'Bidar Rubber') have moved this Commission. It is prayed by M/s. Bidar Rubber that the amount that was due from its predecessor consumer M/s. Supersonic Rubber shall not be recovered from it and instead it has to be sorted out between KPTCL and KSIIDC as agreed to between them.

3. On notice M/s. Gulbarga Electricity Supply Company Limited (hereinafter referred to as GESCOM) has put in appearance through M/s. Just Law Advocates

4. We have heard Sri A. Nagaraj Naidu for M/s. Bidar Rubber, Sri M.K. Girish for M/s. KSIIDC and Sri Sriranga for GESCOM. We have also

considered written submissions placed before the Commission and the orders of the Hon'ble High Court dated 26.12.2010.

5. From the respective submissions, the issue that arises for consideration is who, among M/s. Bidar Rubber and KSIIDC, has to discharge the liability of electricity arrears relating to the industrial property / premises now occupied by the petitioner.

6. It is submitted that M/s. Bidar Rubber has purchased a sick unit by name M/s. Supersonic Rubber Private Limited through an auction sale conducted by M/s. KSIIDC for a consideration of Rs.87.50 lakhs. On purchase, when the petitioner approached GESCOM for supply of electricity the latter has raised a claim for Rs.11.94 lakhs as dues for supply to M/s. Supersonic Rubber Private Limited. This claim was disputed by the petitioner who filed WP No. 35500/2004 before the Hon'ble High Court of Karnataka. The Single Judge of the Hon'ble High Court vide order dated 25.8.2006 directed the petitioner therein to file a reply to the demand and respondent GESCOM to consider the same and pass orders. Further the learned Single Judge directed the petitioner therein to pay Rs.6.00 lakhs by way of demand draft and GESCOM not to disconnect the power supply pending consideration of the reply. M/s. Bidar Rubber questioned this order of the learned Single Judge in WA No.1678/2006. The Division Bench dismissed the writ appeal giving to the appellant (the petitioner

herein) the option of filing an appeal before the KERC or instituting a suit for appropriate relief in the competent court.

7. It is further contended by M/s. Bidar Rubber that as per KERC (ES&D) code 4.12(v) it is not liable to pay the amount and the arrears have to be cleared by KSIIDC as per the commitment made by KSIIDC to KPTCL in its letters dated 4.2.2002 and 22.2.2002 wherein KSIIDC has stated that the issue relating to the arrears can be sorted out separately between KSIIDC and KPTCL.

8. The counsel appearing for KSIIDC submits that KSIIDC has already paid an amount of Rs.5,10,364/- towards the principal and the question of interest only has to be resolved between KSIIDC and KPTCL.

9. The counsel appearing for GESCOM, relying on Regulation 4.12(v), submits that it is M/s. Bidar Rubber which has to pay the arrears to GESCOM and not KSIIDC.

10. As M/s. Bidar Rubber and GESCOM rely on Regulation 4.12(v) of the KERC (ES&D) Code, 2000-01, we desire to quote the same :

“4.12(v) : If any person desires to have electricity for a premises for which the power supply agreement has been terminated (whether the service line is dismantled or not) he will be treated as a fresh consumer and the Licensee shall

collect the outstanding arrears in respect of the said premises from such person before connection is given".

11. A careful reading of the above provision makes it clear that it is the new consumer, in this case the petitioner, who has to pay the outstanding arrears in respect of a premises for which electricity was disconnected and not KSIIDC. The letters addressed by KSIIDC to KPTCL cannot override the statutory provision nor this Commission can give a direction based on such correspondence. There is no jural relation between KSIIDC and GESCOM. The legal relation is only between M/s. Bidar Rubber and GESCOM as a consumer and the supplier.

12. In a somewhat similar case, the Hon'ble High Court of Karnataka (WP 5007/2005) after considering the legal effect of Clause 4.12(v) of the ES&D Code has held that it is the fresh consumer who desires to have electricity who has to discharge the arrears.

13. In a recent case of Haryana State Electricity Board Vs. Hanuman Rice Mill reported in AIR 2010 SC 3835, the Hon'ble Supreme Court has held that if statutory rules provided for recovery of previous owner's arrears as a pre-condition for reconnection, the subsequent purchaser of a premises has to pay the arrears for seeking connection / reconnection of the supply.

14. In view of Regulation 4.12(v) and the judgments of the Hon'ble Supreme Court and Karnataka High Court cited above, we hold that it is M/s. Bidar Rubber which is liable to pay the arrears due to GESCOM and the latter is entitled to recover the arrears from the petitioner in accordance with law. However, this shall be without prejudice to the rights of M/s. Bidar Rubber to make a claim against KSIIDC in view of the sale conditions referred to in KSIIDC correspondence with KPTCL dated 4.2.2002 to the effect that "as per the terms and conditions of the sale letter in favour of the purchaser, the purchaser is liable to pay only the fresh deposit and other charges applicable for a fresh power connection".

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

Sd/-
(VISHVANATH HIREMATH)
MEMBER

Sd/-
(K. SRINIVASA RAO)
MEMBER