

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
BENGALURU**

Dated : 9th April, 2015

- | | |
|--------------------------|--------|
| 1. Sri H.D. Arun Kumar | Member |
| 2. Sri D.B. Manival Raju | Member |

Complaint No.1 / 2015

BETWEEN:

- 1) Vidyuth Grahakara Hitarakshana Vedike,
Opposite Town Hall,
Hubballi – 580 020.
- 2) Karnataka State Licenced Electrical
Contractors Association,
No.33, Avenue Road,
Bengaluru – 560 002.

.. **COMPLAINANTS**

[Complainants represented by M/s. Link Legal India Law Services, Advocates]

AND:

- 1) Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bengaluru – 560 001
- 2) Mr. Pankaj Kumar Pandey,
Managing Director,
Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bengaluru – 560 001
- 3) Chamundeshwari Electricity Supply Corporation Limited,
No.924, L.J. Avenue, Commercial Complex,
New Kantharaj Urs Road,
Mysuru – 570 009

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- 4) Mr. D. Kiran,
Managing Director,
Chamundeshwari Electricity Supply Corporation Limited,
No.924, L.J. Avenue, Commercial Complex,
New Kantharaj Urs Road,
Mysuru – 570 009
- 5) Gulbarga Electricity Supply Company Limited,
Station Road,
Kalaburagi - 585 101
- 6) Mr. M. Mahadev,
Managing Director,
Gulbarga Electricity Supply Company Limited,
Station Road,
Kalaburagi - 585 101
- 7) Hubli Electricity Supply Company Limited,
Navanagar
Hubballi – 580 025
- 8) Mrs. Kushboo Goel Chaudhary,
Managing Director,
Hubli Electricity Supply Company Limited,
Navanagar
Hubballi – 580 025

..

RESPONDENTS

*[Respondents 1,2, 5 & 6 represented by M/s. Justlaw, Advocates, and
Respondents 3, 4, 7 & 8 represented by M/s. Induslaw, Advocates]*

ORDERS

- 1) This is a complaint filed under Section 142 of the Electricity Act, 2003,
(hereinafter referred to as the Act) requesting:

- (i) To set-aside and quash the impugned communications issued by
the Respondents at ANNEXURES – C1, C2, C3, C4 and C5, as illegal
and *ultra vires* of the Act, and the relevant Regulations framed

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thereunder and also the Conditions of Supply (CoS) of Electricity of Distribution Licensees in the State of Karnataka, approved by this Commission;

- (ii) To direct the Respondents to strictly comply with the provisions of the Act, and the relevant Regulations and the CoS for supply of electricity;
 - (iii) To take appropriate action against the Respondents for their willful disobedience of the authority of this Commission in issuing the impugned communications.
- 2) The ultimate effect of the impugned communications, ANNEXURES – C1 to C5, is that:
- (a) Permanent electricity connection could be given to a residential building, consisting of ground plus two floors, whose total area does not exceed 800 Sq.Metres excluding the parking area, based on the sanctioned plan issued by the Municipal authorities;
 - (b) For all other buildings (other than those buildings mentioned above), exceeding ground plus two floors, permanent electricity connection could be given only after compulsorily obtaining the 'Occupancy Certificate' issued by the Municipal authorities.

- 3) The Complainants have contended that, with regard to obtaining a permanent supply of electricity, the insistence on production of a sanctioned plan or occupancy certificate issued by the Municipal authorities, as stated in the impugned communications, is in violation of the express provisions of the Act and the relevant Regulations framed thereunder and also the CoS approved by this Commission and that the Distribution Licensees are bound by the provisions of the Act, and the relevant Regulations and the CoS for supply of electricity. Therefore, they have contended that the impugned communications are liable to be set-aside.

- 4) The gist of the Respondents' contentions is as follows:
 - (a) Clauses 4.02(ii)(a) and 9.01 of the CoS provide that the documents relating to proof of occupancy shall be filed along with the application for supply of electricity in the prescribed Form, and the proof of occupancy can be established only by production of an 'Occupancy Certificate' issued by the Municipal authorities. Therefore, it is contended that the impugned communications / circulars are only specifying the requirements of the CoS, and they do not add or delete any provision of the Regulations or the CoS, as sought to be portrayed by the Complainants. Further, they have contended that the Municipal Laws and the Building Bye-laws would govern any construction of building and

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the Municipal Laws would require that in respect of multi-storeyed buildings, an 'Occupancy Certificate' has to be obtained before the building can be occupied, and such building cannot be occupied in the absence of an 'Occupancy Certificate'. Therefore, it is contended that it would be illegal for an owner to either occupy or to allow any other person to occupy a multi-storeyed building without the existence of an 'Occupancy Certificate';

- (b) (i) The present dispute is in the nature of a dispute between a Consumer and a Distribution Licensee and such dispute is not maintainable before this Commission, and the appropriate proceedings would lie before the Consumer Grievance Redressal Forum (CGRF) concerned;
- (ii) The present proceedings filed at the behest of the Associations are not maintainable;
- (iii) The present Complaint filed under Section 142 of the Act, is not maintainable, as the reliefs to be sought under this Section are totally different;
- (iv) The officials of the Respondents, viz., Respondents 2, 4, 6 and 8, are not necessary or proper parties to the present Complaint, as no

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specific allegations have been made against them in their personal capacity.

Therefore, the Respondents have prayed for dismissal of the Complaint.

5) We have heard the oral submissions made by the learned counsel for both the parties and have perused the pleadings and the documents on record. The learned counsel for the Complainants has submitted that he does not press for punishment or penalty against any of the Respondents and that he confines the reliefs only to those mentioned at paragraph 1 (i) and 1 (ii) above.

6) Based on the above, the following issues would arise for our consideration:

(1) Whether the Complainants can maintain the present proceedings before this Commission for claiming any of the reliefs stated in paragraph-1 (i) and 1 (ii) above?

(2) Whether the insistence on production of a Sanctioned Plan / Occupancy Certificate, as contemplated in the impugned communications, is contrary to the existing relevant provisions of law for supply of electricity?

(3) What Order?

7) After considering the submissions of the parties and the relevant provisions of law, our findings on the above issues are as follows :

8) **ISSUE No.(1) :**

(a) In a somewhat similar situation, the Hon'ble Supreme Court of India has considered the powers of the Commission to issue general directions against the Licensees to enforce the Conditions of Licence and to comply with the Regulations framed by it. After an analysis of the various provisions of the Act, in paragraphs-16 and 18 of its Judgment cited in **(2007) 8 SCC 381** in the case of *Maharashtra Electricity Regulatory Commission –Vs- Reliance Energy Limited and others* (Civil Appeal 2846 of 2006), the Hon'ble Supreme Court has held thus :

“16. A comprehensive reading of all these provisions leaves no manner of doubt that the Commission is empowered with all powers right from granting licence and laying down the conditions of licence and to frame regulations and to see that the same are properly enforced and also power to enforce the conditions of licence under sub-section (6) of Section 128.”

“18. When the Commission received a spate of complaints from consumers against its licensees / distribution companies that are arbitrarily issuing supplementary / amended bills and charging excess amounts for supply of electricity, it felt persuaded to invoke its general power to supervise the licensees / distribution

companies and in that connection issued notice dated 3.8.2004. There can be no manner of doubt that the Commission has full power to pull up any of its licensee or distribution company to see that the rules and regulations laid down by the Commission are properly complied with. After all, it is the duty of the Commission under Sections 45(5), 55(2), 57, 62, 86, 128, 181 and other provisions of the Act to ensure that the public is not harassed."

- (b) In the present case, the grievances of the Complainants are that the Respondents are insisting upon the production of the Sanctioned Plan / Occupancy Certificate before granting permanent supply of electricity to a building, as stipulated in the impugned communications issued by them, though there is no such provision in the existing relevant Regulations and the CoS. In view of the above decision of the Hon'ble Supreme Court, it is clear that this Commission can examine the said question and issue appropriate directions, if need be.
- (c) The issue involved in the present case is not a dispute between a Consumer and a Distribution Licensee falling under Section 42(5) of the Act. The grievance is against the Licensees' action, which affects the Consumers as a whole, and therefore, the Commission can examine the grievance to verify whether the Distribution Licensee has been insisting the production of any documents beyond the purview of the provisions of the CoS. It may be true that Section 142 of the Act may not be the appropriate Section under which the Complainants could seek the reliefs mentioned at paragraph-1(i) and 1(ii) above. Merely quoting a wrong

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provision does not bar the Commission from examining the issue involved and passing suitable directions, if the Commission has jurisdiction under other provisions of the Act, to decide the said issue. We note that the Respondents 2, 4, 6 and 8 in this case are not necessary and proper parties, as no specific allegations have been made against them by the Complainants, but this does not affect the maintainability of the Complaint against the others. Hence, the preliminary objections raised by the Respondents regarding the maintainability of the present proceedings, do not survive. Accordingly, Issue No.(1) is answered in the affirmative.

9) **ISSUE No.(2) :**

- (a) The learned counsel for the Respondents have contended that the impugned communications are only specifying the existing requirements of the Act and the supply Regulations, including the CoS, and that they are not adding any new provision, or deleting any existing provision, for supply of electricity.
- (b) Let us now examine whether the Respondents are factually correct in their above contention. Chapter IV of the CoS lays down the conditions to be fulfilled by different categories of Applicants for obtaining electricity supply to their premises. So far as the production of documents relating to proof of ownership, or proof of occupancy, of the premises is concerned,

the relevant provisions are contained in Clauses 4.02(1) and 9.01 of the CoS. The relevant part of the said provisions are extracted below :

“4.02 Application for supply / additional supply of electricity.

(1) Any person desirous of availing himself of Power Supply shall comply with the following requirements besides other specific requirements detailed elsewhere under these Conditions.

(i) Application for supply of electricity shall be filed with the Distribution Licensee by the owner or occupier of the premises.
.....

(ii) The application dully filled in shall be filed at the local office of the Licensee. Attested true copies or Photostat copies of the following documents as applicable shall be enclosed along with the application.

(a) Proof of ownership of the premises or proof of occupancy.

(b)

(c)

(d)

(e) Indemnity Bond if the Applicant is not the owner of the premises.

(f)

(g)

(iii) to (v)

- (2) *The Licensee shall verify the application and the enclosed documents at the time of receipt of the Application and shall give an acknowledgment after satisfying himself of the completeness of the application.*
- (3)
- (4)"

“4.09 General

- i) *In case of domestic / non-commercial installations, the consent of the owner is not necessary where the owner is not the occupant of the premises. In such cases proof of occupancy such as valid power of attorney or latest rent paid receipt or valid lease deed shall be produced.*
- ii) *If the Applicant is not the owner of the premises, Indemnity bond shall be produced as per Annex-8.*
- iii) *Unauthorised occupants of the premises shall not be given power supply connection for any purpose.*
- iv) to xii)"

“9.00 APPLICABLE TO COMMERCIAL / RESIDENTIAL BUILDING (S) / COMPLEX (ES) / M.S. BUILDINGS

- (a) *Where Requisitioned load is 35 KW or more or*
- (b) *Where the built-up area of building is more than 800 Sq. Mtrs.*

General procedure for arranging power supply under Clause 4.00 and provisions under K.E.R.C. (Recovery of Expenditure for Supply of Electricity) Regulations, 2004 and its amendments from time to time wherever applicable shall be complied with by the Applicant and the Licensee.

9.01 *The Owner/ Promoter / Occupier of the Multi storied Buildings / Complexes shall register the application for power supply in the prescribed form along with the following documents at the jurisdictional Sub-division office of the Licensee duly paying the registration cum processing fee as per Clause 30.01.*

(1) Copy of sanctioned plan of the Building / Complex showing the built-up area of building.

(2) Proof of Ownership / GPA / Occupancy.

(3) NOC issued by the Licensee to obtain plan sanction, wherever applicable.

(4) Route sketch to locate the building.

NOTE :-

- i. In the case of existing buildings already having power supply, if sanctioned plan is not available, plan of the building / complex prepared duly showing the built-up area of the entire building and certified by the registered Architect / Civil Engineer and signed by the Applicant shall be furnished.*
- ii. In the case of new Buildings, an Architect's / Civil Engineer's Plan as per actual duly showing the built-up area of building certified by Registered Architect / Engineer and signed by the Applicant shall be furnished along with the sanctioned plan, if there is any deviation in construction from the sanctioned plan.*
- iii. The Applicant shall not deviate from the condition of providing space at his premises free of cost for erection of transformer as indicated in the layout plan approved by the Licensee at the time of issue of N.O.C. by the Licensee.*
- iv. In case the Applicant fails to produce the plan of the building / complex prepared duly showing the built-up area of the entire building as stipulated in Paras (i) & (ii) above, the application shall be rejected."*

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- (c) As already noted, the effect of the impugned communications issued by the Respondent-Licensees is as follows :
- (i) Permanent electricity connection could be given to a residential building, consisting of ground plus two floors, whose total area does not exceed 800 Sq.Metres excluding the parking area, based on the sanctioned plan issued by the Municipal authorities;
 - (ii) For all other buildings (other than those buildings mentioned above), exceeding ground plus two floors, permanent electricity connection could be given only after compulsorily obtaining the 'Occupancy Certificate' issued by the Municipal authorities.
- (d) Clauses 4.01 to 4.09 of the CoS are general procedures for arranging power supply for all categories of consumers. For different categories of consumers, the other additional specific requirements to be fulfilled, are stated in subsequent conditions, viz., Clauses 5.00 to 12.00 of the CoS. For Commercial / Residential Buildings / Complexes / M.S. Buildings, where the requisitioned load is 35 KW or more, or where the built-up area of the building is more than 800 Sq.Mtrs, Clauses 9.01 to 9.14 of the CoS are applicable, apart from the general procedure stated in Clause 4.00 of the CoS. In respect of buildings not covered under Clause 9.00 of the CoS, Clause 4.00 of the CoS would be applicable. Clause 4.00 of the CoS does

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- not specify the production of Sanctioned Plan of the building for supply of electricity. Clause 9.00 of the CoS does not insist on production of Occupancy Certificate, but on the other hand, it insists on production of the Sanctioned Plan of the building for supply of electricity. Further, the Note under Clause 9.01 states the procedure to be followed, if sanctioned plan is not available in the case of the existing buildings already having power supply, and if there is any deviation in construction from the sanctioned plan in the case of a new building.
- (e) The plain reading of the effect of the impugned communications would establish that they are inconsistent with the existing Clauses 4.00 and 9.00 of the CoS. Therefore, the contention of the Respondents that the impugned communications are only specifying the requirements of the CoS does not hold water.
- (f) The Respondents have further contended that the 'proof of occupancy' of a building, stated in Clauses 4.02 and 9.01 of the CoS, could be established only on production of an 'Occupancy Certificate' issued by the Municipal authorities, and in the absence of it, the occupation becomes unauthorized. Further, they have contended that Clause 4.09(iii) of the CoS specifies that 'unauthorized occupants' of the premises shall not be given power supply connection for any purpose.

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- (g) Though the above-said contentions of the Respondents appear to be attractive, the close reading of the relevant clauses of the CoS, and the provisions contained in Section 43 of the Act, would make it clear that the interpretation given by the Respondents regarding the requirements of 'proof of occupancy' and the meaning of 'unauthorized occupant', is not acceptable.
- (h) The supply of electricity to a premise is governed by Section 43 and other provisions of the Act, and the relevant Regulations framed thereunder. It is not disputed that the CoS has the force of Regulations framed under the Act. The Distribution Licensee is bound by the provisions contained in the CoS for supply of electricity. The CoS nowhere specifies production of an 'Occupancy Certificate' issued by the Municipal authorities for obtaining the power supply to a building. Previously, the KEB Electricity Supply Regulations, 1988, governed the supply of electricity to a premise. The said Regulations contained general conditions in Regulation 4.00 for power supply. Regulation 4.05(g) thereof provided for furnishing an 'Occupancy Certificate' from the competent authority, wherever applicable, before supplying electricity. That provision was deleted as per the KEB Electricity Supply (Amendment) Regulations, 1998, dated 27.4.1998. Subsequently, revised Regulation 4.05(g) was introduced by the KEB Electricity Supply (Amendment) Regulations, 1998, with effect from 5.11.1998. The revised version of Regulation 4.05(g) stated that, "*Furnish the proof of ownership in the form of sale deed or partition deed or khata/*

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succession or heirship certificate or deed of last Will, etc. An intending consumer who is not the owner of the premises and who is the occupier shall, if so required by the Board, give proof or produce documentary evidence in support of his lawful occupation of the premises like lease deed or power of attorney and also execute an Indemnity Bond indemnifying the Board against any losses on account of disputes arising out of the release of service to the occupant, from the Competent Authority wherever applicable before service." Therefore, it is quite clear that production of an 'Occupancy Certificate' was dispensed with from 27.4.1998 and even in the revised insertion of Regulation 4.05(g), production of an 'Occupancy Certificate' was not insisted upon. On the other hand, it provided that occupancy could be supported by producing a lease deed or a power of attorney, etc., and executing an Indemnity Bond as noted above.

- (j) The KEB Electricity Supply Regulations, 1988, was replaced by the KERC (Electricity Supply and Distribution) Code, 2000-01 with effect from 7.1.2003. Condition 4.00 of the said Code contained general procedure for arranging power supply. Condition 4.01(iii) of the said Code provided that the copies of proof of ownership of the premises or proof of occupancy should be produced by the Applicant apart from other documents, and it also provided that an Indemnity Bond should be executed if the consumer was not the owner of the premises. It did not provide for production of an 'Occupancy Certificate' issued by the

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- Competent Authority. The said Code was replaced by the present CoS with effect from 17.6.2006.
- (k) As already noted, the present CoS does not insist on production of an 'Occupancy Certificate' issued by the Municipal authorities. The 'proof of occupancy' is therefore understood in the sense that the occupier should have authority from the owner to occupy. We have already noted that, where Clause 9.00 of the CoS applies, the Applicant is required to produce a copy of the Sanctioned Plan of the building, but not in other instances. The 'Occupancy Certificate' can be issued by the Municipal authorities, if the building is constructed after obtaining the Sanctioned Plan and the Completion Certificate. Therefore, it is clear that CoS has dispensed with the production of 'Occupancy Certificate' for proof of occupancy of a building. Therefore, we are of the considered view that 'proof of occupancy' of a building, as required under the CoS, is not understood as contemplated under the Municipal Laws and the Building Bye-laws.
- (l) Clause 4.09(iii) of the CoS indicates that the unauthorized occupants of the premises shall not be given power supply connection for any purpose. CoS has not defined 'unauthorized occupants' and it does not specify the nature of such unauthorized occupation. Therefore, we have to interpret 'unauthorized occupants' in the context of other Clauses in the CoS. The Clauses 4.02(1)(ii)(e) and 4.09(i)&(ii) of the CoS, which stipulate that, for

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availing electricity supply, an Applicant has to give an Indemnity Bond as per ANNEXURE-8, if he is not the owner of the premises. The specimen of the Indemnity Bond at ANNEXURE-8 of the CoS states that, 'the Applicant could not obtain the consent of the Owner but produced the proof of occupancy, i.e., valid power of attorney / latest rent paid receipt / registered lease deed, therefore, electricity connection may be given on agreeing to indemnify and keep harmless the Licensee from all the claims whatsoever by the Owner, etc.' Thus, if the Applicant is unable to provide 'proof of occupancy' by way of a lease deed / rent paid receipt / power of attorney, his occupancy will be treated as 'unauthorized'. In substance, the Applicant should obtain the consent of the Owner, in one or the other way, for occupying the premises; otherwise, the occupation of such person will be treated as 'unauthorized'.

- (m) Previously, this Commission had taken the view that it was for the Municipal Authority to enforce the provisions of the Municipalities / Corporation Act and to take action against the unauthorized constructions or deviation of Sanctioned Plan, and the same was not within the domain of the Commission. On the basis of the said view, a request made by the BESCO to amend the CoS in order to maintain an enabling provision to insist upon the Building Completion Certificate by the local authority before arranging power supply to multi-storeyed buildings, was not entertained by this Commission. A Writ Petition in W.P.No.15086/2009 (GM-KEB-PIL) filed against the rejection of the request

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of the BESCO was dismissed by the Hon'ble High Court of Karnataka, by Order dated 22.6.2009.

- (n) Electricity is an essential commodity for all the persons. Section 43 of the Act, envisages an universal obligation on the part of the Distribution Licensee to provide electricity on an application by the owner or occupier of any premises. Under the Act, the Commission has been delegated with the powers to frame suitable Regulations for supply of electricity to the consumers, on such terms and conditions. The CoS is duly framed and approved by this Commission, specifying the terms and conditions for supply of electricity to the consumers. The CoS has the full force and effect of a statute. This Commission alone has the right to amend or modify any of the provisions of the CoS. All persons, who are entitled to get supply of electricity under the terms of the CoS, cannot be denied the supply of electricity, for any extraneous reasons. Therefore, even a person, whose occupation of a building is not as per the provisions of the Municipality Act and Bye-Laws, is entitled for supply of electricity to his premises, if he satisfies the provisions of the CoS. In this way, the object of universal obligation to supply electricity to all persons is met with. Hence, the supply of electricity to an occupant of a building, whose occupation may not be authorized under the Municipality Act and Bye-laws, serves a greater cause and does not amount to abetting any illegality. For the above reasons, Issue No.(2) is answered in the affirmative.

10) **ISSUE No.(3) :**

For the foregoing reasons, we pass the following :

ORDER

- (a) The impugned communications, produced at Annexures– C1 to C5 to the Complaint, shall not be relied on by the Respondent Distribution Licensees in processing of an application for supply of electricity to any premises; and
- (b) The Respondent Distribution Licensees shall comply with the relevant Regulations and the Conditions of Supply, while providing supply of electricity to any premises.

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER