

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

Dated : 19th November, 2015

Present:

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| 1. Sri M.K. Shankaralinge Gowda | Chairman |
| 2. Sri H.D. Arun Kumar | Member |
| 3. Sri D.B. Manival Raju | Member |

Complaint No.6 / 2014

BETWEEN:

M/s. SAISUDHIR ENERGY (Chitradurga) Pvt.Ltd.,
No.401, G.P. Elite, 8-2-283/4,
Road No.14, Banjara Hills,
Hyderabad – 560 034
[Represented by Shri K.B. Lakshmikanth, Advocate]

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PETITIONER

AND:

- 1) Shri D. KIRAN, IRS,
Managing Director,
Chamundeshwari Electricity Supply Corporation Limited,
No.927, L.J. Avenue,
New Kantharaja Road,
Saraswathiuram,
Mysuru – 570 009
- 2) Shri A. SHIVANNA,
Financial Adviser,
Chamundeshwari Electricity Supply Corporation Limited,
No.927, L.J. Avenue,
New Kantharaja Road,
Saraswathiuram,
Mysuru – 570 009

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- 3) Smt. B. JAYASHREE,
 Superintending Engineer – Commercial,
 Chamundeshwari Electricity Supply Corporation Limited,
 No.927, L.J. Avenue,
 New Kantharaja Road,
 Saraswathiuram,
 Mysuru – 570 009

[Represented by Just Law, Advocates]

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RESPONDENTS

ORDERS

- 1) This Complaint is filed on 11.12.2014 under Section 142 of the Electricity Act, 2003, contending that the Respondents have contravened the Order dated 14.11.2014 passed by this Commission on I.A.No.1/2014 in OP No.24/2014, produced at ANNEXURE-A to the Complaint, praying that the Respondents be directed to pay a penalty, and further for a direction to the Respondents to deposit an amount of Rs.24.90 Crores to the account of the Complainant in Canara Bank, Prime Corporate Branch, Secunderabad, for restoration of the Performance Security offered by the Complainant.
- 2) On I.A.No.1/2014 in OP No.24/2014, this Commission, by its Order dated 14.11.2014, had directed the Respondent- Chamundeshwari Electricity Supply Corporation Limited (CESC) not to proceed with invoking of the Performance Security offered by the Complainant, for a period of six weeks from the date of the said Order. The Complainant has contended that, inspite of such Order, the Respondents herein, viz., the Managing Director, Financial Advisor and Superintending Engineer (Commercial) of

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CESC, had brought pressure on Canara Bank, which had issued the Bank Guarantee on behalf of the Complainant, and got encashed the said Bank Guarantee, though the Interim Order dated 14.11.2014 was in operation, directing not to proceed with invoking of the Performance Security.

- 3) The OP No.24/2014 has been decided finally by this Commission, by Order dated 28.1.2015. One of the directions issued in the said final Order of the Commission relates to the Performance Security offered by the Complainant by way of Bank Guarantee, which reads thus:

“The Respondent shall restore the Performance Security, furnished by the Petitioner by way of Bank Guarantees, from the respective dates of their appropriation by the Respondent, at its cost, within four weeks from the date of this Order.”

It may be noted here that the Respondent-CESC has filed Appeal No.176/2015 before the Hon'ble Appellate Tribunal for Electricity (ATE) against the final Order dated 28.1.2015 passed by this Commission in OP No.24/2014. In the said Appeal, the request of the Respondent-CESC for an Interim Order of Stay against the direction issued by this Commission to restore the Performance Security was rejected by the Hon'ble ATE.

- 4) The learned counsel for the Respondents herein submitted that the Respondent-CESC has complied with the direction of this Commission to

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- restore the Performance Security, subsequent to rejection of their request by the Hon'ble ATE, for stay of the said direction of this Commission, and submitted that in the light of the same, the present Complaint deserves to be dismissed.
- 5) The learned counsel for the Complainant was absent in the Court on 1.10.2015, when the counsel for the Respondents filed a copy of the said Order of the Hon'ble ATE. Hence, the case was adjourned to 29.10.2015 for the plea of the Complainant on the submission made by the learned counsel for the Respondents. On 29.10.2015, when the case was called in the Court, the counsel for the Respondents was present and the Complainant was not present, either in person or through its counsel. Therefore, the case was reserved for orders.
- 6) It appears, the Complainant is not interested in prosecuting the Complaint any further, as the Performance Security has been restored by the Respondent-CESC. Therefore, it appears, the Complainant or its counsel remained absent. Even after the case was reserved for orders, and till date, the Complainant has not made any effort to make its submission in support of its complaint. Therefore, we are of the considered opinion that the Complaint deserves to be dismissed for non-prosecution by the Complainant.

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7) It may also be noted here that, the Order dated 14.11.2014 passed on I.A.No.1/2014 in OP No.24/2014 is against the Respondent-CESC, which is a legal entity. However, the present Complaint is filed against the persons, who are holding different offices in Respondent-CESC. There is no provision under the Electricity Act, 2003, to take action against the officials of a legal entity, in their personal capacity, in respect of a contravention of the Commission's Order by the legal entity. Section 149 of the Electricity Act, 2003, which empowers, in certain circumstances, to punish the officials of a Company in their personal capacity, where an offence has been committed by a Company, is not applicable to the present case, as the contravention alleged against the Respondents does not amount to an offence. For this reason also, the Complaint is not maintainable against the officials of the Respondent-CESC, in their personal capacity.

8) For the foregoing reasons, we pass the following :

ORDER

The Complaint stands dismissed.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER