

No.N/35/09

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 26th August 2010

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

Case No. OP 26/2009

Between

Federation of Karnataka Chambers of
Commerce and Industry (FKCCI)

'Federation House', K.G. Road

B A N G A L O R E – 560 001

(Represented by its Advocate Sri Shridhara Prabhu)

... Petitioner

And

1. The Principal Secretary, Department of Energy,
Govt. of Karnataka, Vikasa Soudha,
Dr.Ambedkar Veedhi, Bangalore – 560 001
 2. The MD, BESCO, Corporate Office,
K.R. Circle, BANGALORE - 560 001
 3. The MD, MESCOM, Paradigm Plaza,
A.B. Shetty Circle, Mangalore – 01
 - 4 The Managing Director, GESCOM, Main Road,
Gulbarga – 29
 5. The MD, HESCO, Navanagar, P.B.Road, Hubli–25
 6. The MD, CESC, LJ Avenue Commr. Complex, New
Kantharaja Urs Road, Saraswathipuram, Mysore–570 009
- (Represented by its Advocate Sri Sriranga)

... Respondents

1. This Petition is filed the by the Federation of Karnataka Chambers of Commerce and Industry (FKCCI) against the State of Karnataka and five ESCOMs. In the petition the petitioner has made the following prayers :

- A. Direct an investigation into the affairs of the licensees by appointing an Investigating Authority under section 128 of the Electricity Act, 2003;
- B. Revoke the licenses of the second, third, fourth, fifth and sixth respondent distribution licensees;

- C. Impose a penalty of Rs.1,00,00,000/- (Rupees One Crore only) on each of the respondent licensees for the denial of power supply thereby constituting the violation of the Act, code, orders and regulations;
 - D. Set aside the notification issued by the licensees at Annexure P-1 (Colly) and Annexure P-2 issued by the second respondent;
 - E. Grant the cost of the petition, and Pass any other order/s to meet the ends of justice and equity.
2. The respondents have put in appearance through their counsel and have also filed their statement of objections.
3. We have heard both the counsels and also considered the averments made in the petition, the objection statement and the written arguments.
4. The main submission of the petitioner is that the respondent electricity supply companies of the State have violated section 43 of the Electricity Act, 2003 and clause 24.1 & 11.1 of the Karnataka Electricity Regulatory Commission (Conditions of Licence for ESCOMs) Regulations 2004 and hence in exercise of its powers conferred on the Commission under Regulation 19, their licenses shall be revoked after holding an investigation into the affairs by appointing an Investigating Authority under section 128 of Electricity Act, 2003. Further, a penalty of Rs.1 crore should be imposed on each of the respondents for denial of power supply in violation of statutory regulations.

According to the petitioner, respondents are bound to provide continuous, reliable and quality power to the consumers within their areas of distribution as per section 43 of the Electricity Act, 2003 read with KERC (Licensees' Standards of Performance) Regulations, 2004 and tariff orders passed by the Commission from time to time. The notifications issued by the respondents from time to time in curtailing the power are in contravention of the statutory provisions. Further it is contended that there is no authority vested with the licensees to deny power to the consumers unless they seek an order from this Commission under section 23 of the Electricity Act, 2003.

5. Per contra the counsel appearing for respondents has contended that under the provisions of the Electricity Act, 2003, it is one of the functions of the utilities to maintain the balance between the demand and supply. According to him, during the relevant period the demand for power had outstripped the availability and therefore they had no other option than to regulate the supply based on daily demand and availability of power. Being State owned utilities, they are taking all steps to procure as much power as possible even by resorting to buying of power at high rates. The counsel for the respondents further submitted that obtaining the approval of the Commission under Section 23 of the Electricity Act, 2003 for maintaining the daily schedule of supply is not a condition precedent. According to him the timetable notified indicating the hours of supply in no way contravenes Section 23 of the Act and on the contrary, it helps the consumers in arranging their affairs. The issue of notification indicating the hours of supply also does not violate Condition No.24.1 of the of the licensing conditions. Since the respondents have acted within the provisions of law, there is no question of ordering any investigation into their functioning and revoking the licenses granted.

6. Based on the above arguments, the questions that arise for consideration are –

- i) Whether the ESCOMs of the State have violated Section 43 of the Act, 2003 and Condition No. 24.1 of the licensing conditions.
- ii) Whether the respondents before notifying the hours of supply are required to take prior approval of the Commission under Section 23 of the Electricity Act, 2003.
- iii) Whether notification of timing of the power available violates Section 23 of the Electricity Act, 2003.
- iv) Whether any of the alleged actions of the licensees require an investigation under Section 128 of the Electricity Act, 2003 and
- v) Whether the licenses granted to the respondents require to be revoked on the ground of violating licensing conditions and Section 23 of the Electricity Act, 2003.

7. To appreciate the rival contentions, it is necessary to extract the relevant provisions of the Electricity Act, 2003 and Condition nos. 24.1 & 11.1 of Karnataka

Electricity Regulatory Commission (Conditions of Licence for ESCOMs) Regulations 2004.

“Section 23 of the Electricity Act, 2003: Directions to Licensees – *If the Appropriate Commission is of the opinion that it is necessary or expedient so to do for maintaining the efficient supply, securing the equitable distribution of electricity and promoting competition, it may, by order, provide for regulating supply, distribution, consumption or use thereof.*

Section 43 of the Electricity Act, 2003 : Duty to supply on request–(1) *Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within the month after receipt of the application requiring such supply:*

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission;

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section(1):

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section(1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

KERC(Conditions of Licence for ESCOMs) Regulations 2004

Condition 24.1, Compliance with Standards – *The Licensee shall take all reasonable steps to ensure that all Consumers connected to the Licensee's Distribution System receive a safe, economical and reliable supply of electricity as defined in the Standards specified by the Commission, except where the Licensee is obliged to regulate the Supply as may be directed by the Commission under Section 23 of the Act, 2003.*

KERC(Conditions of Licence for ESCOMs) Regulations 2004

Condition 11.1 Prohibition of Undue Preference – *Subject to Section 62 of the Act, in fixing charges, the Licensee shall not show undue preference to any person or class of persons or discriminate against any person or class of persons”.*

Re Issue Nos. (i) & (ii)

8. In our considered opinion section 43 of the Electricity Act, 2003 has no application to the present case. It applies to initial supply of electricity to a consumer which has to be done within the time specified.

9. Under the provisions of the Electricity Act, 2003 and the Grid Code, the respondents have the functional responsibility to adjust the demand and supply of power considering the availability of power. The respondents have submitted that the consumption in the State has increased considerably after 1.4.2009 and electricity available with the utility is not adequate to meet the entire demand. It is further submitted that on account of shortage of electricity and to maintain an equitable supply among the different consumers, the utilities are compelled to regulate the supply. Considering the facts and the circumstances presented

before us we hold that the measures taken to regulate the supply cannot be considered to be in violation of Section 43 of the Electricity Act. The notification issued informing the hours of supply for the information of the consumers, in our opinion, also cannot be considered to be in violation of the Licensing Regulations as Condition No.24 only contemplates taking of reasonable steps to ensure safe, economic and reliable supply and not supply power at all times. As submitted by the counsel for the respondents, this serves the purpose of helping the consumers in adjusting their affairs based on the timings of supply of power. This is also the demand made generally by the consumers as and when utilities resort to unscheduled power cuts.

10. The counsel for the petitioner referred to the judgment of the Hon'ble Supreme Court in the case of Bihar State Electricity Board Vs. Dhanwath Rice and Oil Mills 1989(1) SCC 452 to bring home the point that failure to supply continuous electricity to the consumers entitles the consumers for appropriate reduction in power charges. A careful reading of this judgment indicates that appropriate reduction in charges is permissible only when a clause to that effect exists in the power supply agreement. In the State of Karnataka this Commission has already imposed a condition on the licencees that consumers in the rural areas to whom power supply hours are reduced shall be given reduction in the fixed charges.

Therefore Issue No. (i) and (ii) are answered in the negative.

Re Issue No. (iii)

11. Section 23 of the Electricity Act as extracted above does not contemplate prior permission from the Commission to be obtained by the utilities for notifying the hours of power supply. There appears to be no doubt that under Section 23 of the Electricity Act, 2003 the appropriate Commission has the power to order regulation of supply if in its opinion the same is necessary or expedient for maintaining efficient supply, securing equitable distribution of electricity and promoting competition. In the absence of any orders or directions issued by the Commission in the matter, there can be no violation as alleged in the petition.

Therefore, in our opinion, issuance of a public notification informing the hours of supply, not contravening any orders issued by the Commission, doesn't violate Section 23 of the Electricity Act, 2003. Accordingly this issue is also answered in the negative.

Re Issue Nos. (iv) and (v)

12. As we have held above that the action of the respondents in issuing a notification regarding the hours of power supply does not violate either the provisions of the Electricity Act, 2003 or the Regulations or the Licensing Conditions, the question of initiating any investigation under Section 128 does not arise. Mere allegation that power was available within the State but still the utilities resorted to restricted power supply is not enough to initiate any investigation. Under Section 128 an investigation could be ordered by the Commission only if it is satisfied that a licensee has failed to comply with any conditions of license or with any of the provisions of the Act or the Rules or Regulations made thereunder. Therefore the prayer for investigation has to be rejected. Consequently Issue Nos. (iv) & (v) are also answered in the negative.

13. 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. Accordingly the Commission will initiate separate proceedings for issuing directions under Section 23 of the Electricity Act, 2003 for maintaining efficient supply and securing equitable distribution of electricity.

14. Subject to the above observations, this petition is rejected.

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

Sd/-
(VISHVANATH HIREMATH)
MEMBER

Sd/-
(K. SRINIVASA RAO)
MEMBER