

No.N/52&55/10

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 28th October 2010

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

Case No. OP 30 & 32/2010

Between

M/s SPA Plaza Shop Owners Association
1094, OTC Road, Nagarthpet
B A N G A L O R E – 560 002
(Represented by its Advocate Sri Shridhara Prabhu)

... Petitioner

And

1. Banghalore Electricity Supply Company Limited
K.R. Circle
BANGALORE – 560 001

2. The Asst. Executive Engineer
BESCOM, W-5 Sub Division
Mysugar Building, J.C. Road
BANGALORE – 560 001

3. The Executive Engineer (Elec.)
MT Division, BMAZ, A.R. Circle, Ananda Rao Circle
BANGALORE – 560 009

4. Hon'ble Electricity Ombudsman
Mahalaxmi Chambers, 6th Floor
9/2 M.G. Road
BANGALORE – 560 001
(Represented by its Advocate Sri Sriranga)

.... Respondents

1. These two petitions have been filed by M/s SPA Plaza Shop Owners Association complaining that the respondents have disobeyed the order passed by the Ombudsman dated 14.6.2010 (Annexure C-5 in OP No.30/2010) and therefore they shall be punished under Section 142 of the Electricity Act, 2003.

2. The respondents have entered appearance and have filed their statement of objection dated 2.9.2010. The petitioner has also filed a rejoinder dated 16.9.2010 to the objections filed.

3. As both these petitions are based on the same order of the Ombudsman dated 14.6.2010, we felt that they shall be heard together and disposed of. Both the parties consented to this and argued the matter together.

4. Counsel for the petitioner vehemently contended that the respondents have violated the order of the Ombudsman dated 14.6.2010 by issuing a fresh back bill taking CT Ratio as 200, contrary to the findings and order of the Ombudsman.

5. The respondents have submitted that they have not violated the orders of the Ombudsman dated 14.6.2010 as the impugned demand dated 17.7.2010 has nothing to do with the earlier demand dated 13.5.2009 which was before the Ombudsman; the fresh demand was issued based on the fresh inspection made in accordance with law on 13.7.2010.

6. The only question that arises for consideration and decision is whether the respondents have violated the orders of the Ombudsman dated 14.6.2010 so as to attract penalty under Section 142 of the Electricity Act, 2003.

7. Admittedly the grievance of the petitioner before the CGRF as well as the Ombudsman was relating to the demand dated 13.5.2009 issued pursuant to the inspection dated 24.4.2009. The contention of the petitioner in the said proceeding was that the inspection dated 24.4.2009 was not carried out in accordance with Regulation 27.1 of the conditions of supply and consequently the demand dated 13.5.2009 raised based on the said inspection was illegal and cannot be enforced.

8. The Ombudsman after considering the order of CGRF and hearing both parties vide his order dated 14.6.2010 set aside the demand dated 13.5.2009 on the ground that the inspection carried out on 24.4.2009 was not carried out in

accordance with the procedure prescribed in Regulation 27.01 which essentially required the testing to be done by a third party and mahazar to that effect was recorded.

9. The grievance made in the present complaint is against the demand dated 17.7.2010. According to the complainant this demand is contrary to the observations and orders of the Ombudsman made in his order dated 14.6.2010.

10. We have looked into the order of the Ombudsman dated 14.6.2010. We do not find any finding of the Ombudsman that no fresh demand shall be raised in future also in accordance with law. For that matter no such order can be passed by any authority. The Ombudsman has only held that the inspection carried out on 24.4.2009 was not in the presence of a third party and hence not in accordance with clause 27.01 and therefore the demand dated 13.5.2009 was invalid.

11. Considering the fact that the inspection that has been carried out on 13.7.2010 is a fresh inspection and prima-facie carried out in accordance with Regulation 27.01, we are of the opinion that the demand made on 17.7.2010 is not in violation of the Ombudsman's order dated 14.6.2010. However, we do not wish to go further into the merits of the fresh demand, as this Commission cannot in law examine this under the provisions of the Electricity Act, 2003.

12. Consequently both the petitions are liable to be rejected and accordingly rejected. It is open to the complainant to question the new demand, if so advised, before the appropriate forum.

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

Sd/-
(VISHVANATH HIREMATH)
MEMBER

Sd/-
(K. SRINIVASA RAO)
MEMBER