

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE.

Dated this the 24th day of November, 2005

Present

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| 1. Shri K.P. Pandey | --- | Chairman |
| 2. Shri H.S. Subramanya | --- | Member |
| 3. Shri S.D. Ukkali | --- | Member |

Case No. OP 06/2005

Between:

Shri Maliksab, Banshankari Film Theatre, R/o Sirol, Nargund Taluk, Dharwad.	---	Petitioner
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Vs.

The Managing Director, HESCOM Hubli & Othersd.	---	Respondents
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The Petitioner who is a consumer under the jurisdiction of that HESCOM has appealed against the order of the Appellate Authority dated 6th September, 2004. The appeal is filed on 7th February, 2005. Notices were issued to the Petitioner as well as the Respondents and Counsels for both the parties were heard. The facts of the case are as under:-

The Petitioner is running a Cinema Theatre at Shirol, Navalgund Taluk in the name and style of M/s. Banashankari Film Theatre. It had been sanctioned supply of power (Meter No. SRLMLP 18) to the extent of 3.25 KW vide order dated 16-7-1985. He has also installed a generator in the Theatre. He was using single phase electricity for running the Cinema Talkies. The premises of the consumer are said to have been visited by the Respondents for inspection on 26-8-2003. It is alleged that the Petitioner was making use of electricity by bypassing the meter and thereby committed theft of 18,079 units valued at Rs.1,56,777/-. The change over switch was seized and sent to meter testing division for testing. It was also alleged that the connected load was found to be 13,250 units in the said installation as against the sanctioned load of 5.84 KW. Being aggrieved by the back bill raised by the Respondents, the Petitioner had filed appeal before the Appellate Authority, of the HESCOM. The said Appellate Authority had passed an order dated 6-9-2004, wherein it had partly allowed the appeal by re-fixing the excess connected load of 9 KW and thereby worked out unauthorized consumption of 9,720 units. Consequently the back billing charges were reduced to Rs.78, 389/- from Rs.1, 56,777/- as per the revised demand notice issued on 5th November 2003. The Petitioner Company aggrieved by the Appellate Authority's order had filed W.P. No.44305/2004 before the Hon.ble High Court of Karnataka. The Hon.ble High, Court after hearing the Counsels for the Petitioner as well as the Respondents had, by its order dated 13th January 2005, permitted the Petitioner to withdraw the writ petition and to provide an opportunity to the Petitioner to prefer a revision u/s 44.10 of the KERC (ES&D) Code. Hence the Revision Petition.

It is stated by the Petitioner that the order of the Appellate Authority levying back bill for 9 KW multiplied by 180 units per month for a period of six months is without any authority of law and also without any basis.+

The Petitioner Company is sanctioned 3.25 KW and the Vigilance Section had calculated by working the connected load to 13.05 KW. Although it is claimed by the Respondents that the theatre was inspected on 26-8-2003, yet no such inspection was conducted. The mahazar copy filed by the Respondent shows that no responsible person from the Petitioner's side was present at the time of the so called inspection. The statement taken from one Shri Mallaiah Nagulthimath has no evidentiary value as he is only a gate keeper and not the film operator. The change over switch which was seized from the premises is said to have been sent for testing and the Petitioner is not aware of result of any such testing of the change over switch. Accordingly, the Petitioner prays for setting aside the said impugned order dated 6-9-2004 and allow the appeal. The Counsel for the Respondent has objected to the plea made by the Petitioner. He has filed written submission along with a copy of the report dated 26-2-2005 sent by the Deputy Electrical Inspector to the Petitioner. At the outset it is argued that the present proceedings are in the nature of second appeal and the Commission has no jurisdiction to admit an appeal against impugned order. According to the Respondent's Counsel, the provisions of section 44.10 of the KERC(ES&D) Codes 2001 have been deleted and therefore the Petitioner cannot invoke the said section and seek admission of the petition. The Counsel has reiterated the allegations made against the Petitioner regarding theft of electricity and has contended that the Appellate Authority's order is reasonable and therefore the appeal should be rejected.

We have perused the papers filed by the Petitioner as well as the Respondents and considered arguments put forward by them. The preliminary objections raised by the Respondent's Counsel regarding admission of the appeal deserves to be rejected. The date of (inspection) occurrence of the event was 26-8-2003 and at that time KERC (ES&D) Code 2000-2001 was in force. As mentioned above, the appeal was filed by the Petitioner on 17th February, 2005 when, the KERC (ES&D) Code 2000-

2001 was still in force. The Notification regarding Rules (Procedure for filing appeal) Regulations, 2005 was issued on 25th March, 2005 deleting section 44.10 of ES & D Code. The Notification came into effect from the date on which it was published in the Karnataka Gazette i.e., 12th Mays 2005. Hence the petitioner was within its right to invoke the said section seeking relief. It is also observed that while disposing the writ petition the Hon.ble High Court had served notices to respondents and both the Parties were heard. The Court has observed that "it was pointed out that the Petitioner had a remedy by way of revision u/s 44.10 of the KERC (ES&D) Code 2000-2001. The counsel for the petitioner at this stage seeks relief of the Court to withdraw the writ petition with a liberty to prefer a revision" before the Hon.ble High Court for permitting the Petitioner to withdraw the petition and filing revision u/s 44.10 of the KERC (ES&D) Code. That being the position, the Respondent cannot raise this ground before the Commission objecting to the admission of the petition. It is also pertinent to point out that the deletion of section 44.10 from the EC&D Code 2000-2001 w.e.f. 12th May 2005 does not take away the power of the Commission to hear the appeals/objections filed before it. Section 19, Chapter II of the KERC (G&C of proceedings) Regulations, 2000 empowers the Commission to initiate proceedings in the following manner:

- a) Suo motu by the Commission.
- b) Objection being filed by the affected party; provided that the term 'affected party' shall mean only a party having substantial cause in the interest of the public at large or a segment of the public and shall include a Consumer Forum.

The term 'petition' has been defined u/s 2G of the said Regulations as under:
"Petition shall mean and include all petitions, applications, complaints, appeals, replies, rejoinder, supplemental pleadings, other papers and documents filed before the Commission".

Thus the petition filed by the Petitioner being in accordance with procedure laid down under KERC (ES&D) Code as well as (G&C Proceedings) Regulations 2000, the same is found to be in order and accordingly admitted by the Commission. In the

light of the above observation, the objection raised by the Respondent is found to be hollow and therefore deserves to be rejected outright.

Coming to the 'mahazar' prepared by the Vigilance Squad it is seen from the copy of the mahazar filed by the Petitioner that there is no evidence to show that a copy of the same was served on the petitioner or any responsible person representing the Petitioner on the date on which such inspection was carried out. As the said inspection was carried out in the absence of the petitioner or any responsible person representing him and a copy of the mahazar was not served on the petitioner on the said date or immediately thereafter, the procedure followed is illegal and lacks evidentiary value. The most crucial piece of evidence referred to by the Respondent in this case is 'change over switch and the meter' which were taken from the premises and sent to AEE and thereafter to the Deputy Electrical Inspector, Gadag. It would appear that the AEE, Navalgund had no jurisdiction to test the said change over switch and the meter and had informed the same to the Vigilance Squad vide his letter dated 27-12-2003. Thus the only conclusion that could be drawn from the above is that the change over meter has not been tested at all and its whereabouts are not known. Hence the allegation of tampering with the change over meter for committing theft of electricity miserably fails. The Appellate Authority which has recalculated the excess load at 9 KW as against excess load of 13.05 estimated by Vigilance Squad had no basis to arrive at that figure. It has merely relied on the statements made by the Respondents. It has also failed in ascertaining the result of any testing of the change over switch and the meter. Thus the order of the Appellate Authority as also the demand notice issued on 5th November 2003 are based on mere allegations and have no legs to stand. The Respondents have failed to adduce any credible evidence in support of the charge of excess connected load and theft of electricity. In the light of the above, the order dated 6-9-2004 passed by the Appellate Authority is quashed and the respondent is directed to refund 50% of the back billing charges paid by the Petitioner by adjustment in the bill raised for the month of December 2005.

The appeal is allowed.

Sd/-
(K.P. PANDEY)
Chairman

Sd/-
(H.S. SUBRAMANYA)
Member

Sd/-
(S.D. UKKALI)
Member