

No.: N/51/15

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

Dated : 7th January, 2016

Present:

Sri M.K. Shankaralinge Gowda	Chairman
Sri H.D. Arun Kumar	Member
Sri D.B. Manival Raju	Member

OP No.25 / 2015

BETWEEN:

Shri D. Subrahmanya Bhat
S/o D. Bheema Bhat,
Aged 51 years,
Residing at Hegdekodi,
Veerakambha Village,
Post KODAPADAVU – 574 222,
Bantval Taluk, Dakshina Kannada District.

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PETITIONER

[Represented by Navayana Law Offices, Advocates]

AND:

The Secretary,
Karnataka Electricity Regulatory Commission,
6th & 7th Floors, Mahalaxmi Chambers,
No.9/2, M.G. Road,
BENGALURU – 560 001

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RESPONDENT

- 1) The petitioner has filed this petition under Regulations 10, 11, 12 & 13 of the KERC (General and Conduct of Proceedings) Regulations, 2000, (hereinafter called the Regulations) seeking the following reliefs:

Direct the respondent to supply the free copy of the Tariff Order - 2015 of MESCOM, under the signature of an officer empowered in this behalf by the Chairman or the Secretary, as provided under Regulation 31(5) of the Regulations, by setting aside the Communication No.AS/MISC/710 dated 4.8.2015, produced at Annexure P-1, etc.

- 2) The Petitioner has stated in the Petition as follows :
 - (a) Mangalore Electricity Supply Company Limited (MESCOM) filed an application for Annual Performance Review for FY 14 and revised Annual Revenue Requirement & determination of tariff for FY 16 (tariff petition) before the Commission and published a draft of the tariff petition, calling for objections from the public. Pursuant to the said publication, the Petitioner had filed his objections to the tariff petition before the Commission which was numbered as MA-378. The Commission passed the Tariff Order for FY-16 on 2.3.2015.
 - (b) As the Respondent did not supply the copy of the Tariff Order, free of cost, the Petitioner sent an e-mail dated 21.7.2015 and sought for a free copy of the Tariff Order, 2015 of MESCOM. However, the Respondent insisted for payment of Rs.244/- for supplying the same under KERC (Fees)

Regulations, 2004. The Petitioner sent another e-mail dated 29.7.2015 highlighting the legal provisions relating to issuance of orders by the Commission to which, the Respondent replied, vide letter dated 4.8.2015, that an amount of Rs.244/- has to be paid as fee under Regulation 33(2) of the Regulations.

- (c) The Petitioner has contended that the imposition of the fee is arbitrary and illegal and it is opposed to the provisions of the Regulations, read with the KERC (Tariff) Regulations, 2000 and section 111(2) of the Electricity Act, 2003. According to the petitioner, as he had filed his objections to the tariff petition, he should have been considered as 'party concerned' under Regulation 31(5) of the Regulations and should have been provided with a free copy of the Tariff Order under the signature of the Officer empowered in this behalf. He has contended that the insistence on payment of the fee by the Respondent is not proper, as Regulation 33(2) is a general provision and Regulation 31(5) is a special provision, and a general provision has to yield to a special provision. The Petitioner has relied on Section 111 of the Electricity Act, 2003, to state that the limitation period for filing the Appeal commences from the date of receipt of a copy of the Tariff Order, and therefore, the Respondent was duty-bound to supply a copy of the Tariff Order to the Objector of the tariff petition.

- 3) The petition was posted for hearing on admission. During the hearing on admission of the petition on 26.11.2015, the learned counsel for the Petitioner appeared and submitted that it may not be practically possible to send a "certified copy" of the Tariff Order to all the Objectors, as thousands of objectors would file objections to the tariff petition. Therefore, a free copy of the Order may be provided to an Objector who applies for / makes a request. It is also submitted that earnest participants like the petitioner at least should be provided with a free copy.
- 4) After perusing the pleadings and hearing the learned counsel for the Petitioner, the following question arises for our consideration:

Whether a member of the public who has filed objections to a tariff petition pursuant to calling for objections / comments / views from the public in the public consultation process, is entitled to a free copy of the Tariff Order, as of right?

- 5) The relevant provision for supply of a copy of the tariff order is Section 64(4) of the Electricity Act, 2003, which reads thus :

"Section 64. (Procedure for tariff order): -

XXX

XXX

XXX

(4) The Appropriate Commission shall, within seven days of making the order, send a copy of the order to the Appropriate Government, the Authority, and the concerned licensees and to the person concerned.

XXX

XXX

XXX"

- 6) The other relevant provisions in the Regulations are as follows:

“Regulation 31(5):

A copy of every interim order granting or refusing or modifying interim reliefs and every final order passed on any Petition or Notice of Inquiry shall be communicated to the petitioner or the applicant and to the respondents and other parties concerned in the Petition under the signature of an Officer empowered in this behalf by the Chairman or the Secretary, free of cost.”

“Regulation 33(2):

Any person shall be entitled to obtain certified copies of the orders, decisions, directions and reasons in support thereof given by the Commission as well as the pleadings and papers and other parts of the records of the Commission to which he is entitled, subject to payment of fees and compliance with such other terms as the Commission may direct.”

- 7) Under Section 64(4) of the Act, a copy of the Order has to be sent to the Appropriate Government, the Authority, and the concerned licensees and to the person concerned, within seven days from the making of the Order. We hold that the 'person concerned' in Section 64(4) of the Act would mean a generating company or the licensee (whoever has made an application for determination of tariff). It cannot be construed that all the members of the public, who have participated in the public consultation process as per section 64(3), would be 'person concerned'.

- 8) We note that, in substance, Regulation 31(5) requires that, on passing of an order, a free certified copy of the same has to be sent to the petitioner/ applicant, the respondents and other parties, concerned in the petition, free of cost as against Regulation 33(2) which provides that any person can obtain certified copies of the orders on payment of fees.

A 'party to the proceedings' generally means:

"The plaintiff or defendant to a suit, or, a person in whose favour a right / relief exists or a person against whom any right/ relief is claimed."

Strictly, this applies to judicial / quasi-judicial proceedings, which are generally adversarial. Tariff proceedings are inquisitorial proceedings. Public, who participate in the public consultation process in Tariff proceedings, cannot be equated as a 'party to the proceedings' as in adversarial proceedings.

- 9) It is to be noted that, under Regulation 31(5), the Commission is required to 'communicate' the order to the petitioner or the applicant and to the respondents and 'other parties concerned in the Petition'. Communication modes usually followed are sending a copy of the order to the parties to the petition or publishing the order and hosting on the website. In adjudicatory proceedings, which are adversarial in nature, free certified copies of the orders of the Commission are sent to the parties (applicants, petitioners, respondents) and therefore, Regulation

31(5) is in line with such principle. However, in the Tariff proceedings, upon making of the tariff order, the Commission immediately publishes the gist of such tariff order in newspapers and hosts the order & summary of the order on the website www.karnataka.gov.in/kerc for the information of general public. The copies of the tariff order are sent only to the Government, the Central Electricity Authority and the concerned licensees. Whenever, any member of the public applies for the tariff order, the certified copy is issued to him, on payment of prescribed fee, as provided under Regulation 33(2).

- 10) (i) As regards the petitioner's contention about the limitation applicable to filing of appeal against the Tariff Order giving him vested right to receive the copy of such order, we note that the Tariff orders issued after inquisitorial proceedings are put in public domain by being hosted on the web site of the Commission and the operative portion of such orders also published in leading newspapers by the distribution licensees. The petitioner, an objector of the tariff application filed by the distribution licensees thus can be taken as being constructively communicated of the Tariff order. Such mode of communication has been approved by the Hon'ble Apex Court. The Hon'ble Supreme Court of India has, in the case of *Raja Harish Chandra Raj Singh –Vs- The Deputy Land Acquisition Officer and another*, reported in **1961 AIR 1500**, held as follows:

“6.....The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair-play and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to s. 18 in a literal or mechanical way.....”
(Emphasis supplied).

(ii) So also, in the case of *D Saibaba –Vs- Bar Council of India and another*, reported in **(2003) 6 SCC 186**, the Hon'ble Supreme Court has held as follows:

"14..... The words "the date of that order", therefore mean and must be construed as meaning the date of communication or knowledge, actual or constructive, of the order sought to be reviewed."

(Emphasis supplied).

- 11) In the light of the above, it can be concluded that only to the party to the proceedings, the Commission is bound to communicate the order and for the information / knowledge of the public, including any objectors, hosting of the order on the website is sufficient communication of the order. The public who participated in the public consultation process in the tariff proceedings cannot claim a copy of the tariff order as a matter of right.

- 12) Section 111 of the Electricity Act, 2003, provides that any aggrieved person may file an appeal before the Appellate Tribunal within a period of forty five days from the date on which a copy of the order made by the Commission is received by the aggrieved person. We note that section 111 does not imply that a free copy has to be supplied to all the persons, likely to be aggrieved by the order of the Commission. It only states that an appeal before the Appellate Tribunal has to be filed within 45 days from the date on which a copy of the order is received by the aggrieved person and does not cast any duty on the respondent or grant any right to the objector to receive a tariff order, as contended by the petitioner.

- 13) While undoubtedly the current provisions of the Electricity Act, 2003 and the Regulations made by the Commission do not provide for supply of free copy of tariff order to all those who participated in such public consultation in the tariff proceedings, we now proceed to examine whether a provision to do so is required or feasible to be made. In the process of determination of tariff, the Commission is required to consider all views / suggestions and objections received from the public in the public consultation process. This is accomplished by the Commission by calling for objections to the tariff applications made by the licensees from general public and conducting a public hearing to elicit the views of the public. A large number of objections are received and are examined, appreciated and considered in the tariff orders issued by the Commission, which are quite bulky. As noted earlier, apart from hosting the full text of the tariff orders and the summary of the orders on its website by the Commission, the complete details of the charges in the tariff that affect the consumers are published in the leading newspapers by the licensees. Thus, all the participating public are constructively communicated of the tariff orders passed by the Commission and there is no case for individual communication to all the participants. Supply of free copies of the Tariff Orders to all the participants entails substantial cost, which would have to be finally borne by the public, which is not justifiable. Thus, it is only in respect of those who are desirous of obtaining a copy of the Tariff order, the Commission collects fee as per section 86(1)(g) of the Electricity Act, 2003 read with KERC (Fees) Regulations,

- 2004 and Regulation 33(2) of the Regulations. Free certified copies of the orders are only issued to the petitioners and respondents in the adjudicatory proceedings under the provision of Regulation 31(5) of the Regulations, and the same is not be applicable to members of public who participate in the public consultation process in tariff proceedings, by filing written objections or by giving oral views during public hearing.
- 14) Section 86(1)(g) of the Electricity Act, 2003 empowers the Commission to levy fee for the purposes of the Act. Pursuant to the same, the Commission has framed the KERC (Fees) Regulations, 2000 prescribing fee to be paid to the Commission for specified purposes and for obtaining certified copies of any order, a fee of Re.1 per page has to be paid. Accordingly Rs.244/- is sought to be charged as fee to the petitioner, under Regulation 33(2) of the Regulations for providing certified copy of the tariff order. We find no illegality in the communication dated 4.8.2015 addressed to the petitioner by the respondent requiring him to pay the fee.
- 15) Further, we consider that making an exception in collection of fee in respect of a class of participants of a public consultation process in tariff proceedings, as sought by the Counsel for petitioner, is neither provided for in the Regulations nor proper. We, therefore, hold that all the members of the public who have participated in the public hearing or have filed the objections/suggestions in the public consultation process

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in a Tariff proceedings are required to apply for certified copies of the tariff order, if they so desire, and obtain the same after paying prescribed fees.

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

ORDER

The Petition is dismissed.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER