

**No.N/101/11**

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION  
BANGALORE**

**Dated 24<sup>th</sup> May, 2012**

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

**OP No. 49/2011**

**BETWEEN**

M/s. Orange County Resorts and Hotels Limited  
Registered Office,  
2<sup>nd</sup> Floor, St. Patrick's Business Complex  
No.21, Museum Road  
BANGALORE – 560 025  
*[Represented by M/s. Shridhar Prabhu  
Associates, Advocates]*

... **Petitioner**

**AND**

1. Chamnundeshwari Electricity Supply  
Corporation Limited  
L.J. Avenue  
New Kantharaj Urs Road  
MYSORE – 560 009
2. The State of Karnataka  
Represented by its Principal Secretary  
Department of Energy  
Vikasa Soudha,  
Dr. Ambedkar Veedhi  
BANGALOREE – 560 001  
*(Represented by M/s. Just Law, Advocates)*

... **Respondents**

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1. This Petition has been filed by the Petitioner under Section 57(2) of the Electricity Act, 2003, praying for a Declaration that the acts and omissions on the part of the Respondents are violative of the Electricity Act, 2003, National Tariff Policy, National Electricity Policy, Karnataka Electricity Regulatory Commission (Licensee's Standards of Performance) Regulations, 2004, the Background Paper published by the Working Group of the Forum of Regulators on "Protection of Consumer Interests"; and for an Order directing the Respondents to jointly and severally compensate the Petitioner for the loss caused to the Petitioner as detailed in Annexure-P11.

2. It is the case of the Petitioner that the 1<sup>st</sup> Respondent is under an obligation to supply electricity continuously for 24 hours a day under the Power Supply Agreement, subject to only *force majeure* conditions. Violating this obligation, the Respondents have failed to give continuous power supply to the Petitioner. Further, it is the case of the Petitioner that the 1<sup>st</sup> Respondent has failed to meet the standard of performance specified under Sub-Section (3) of Section 57 of the Electricity Act, 2003 and therefore the Respondent is liable to pay compensation for the same.

3. The Respondents have put in appearance through M/s. Just Law, Advocates. A preliminary issue has been raised on behalf of the Respondents on the very maintainability of the Petition. According to the Respondents, the Petition is not maintainable, unless it is shown that a specific standard of performance is violated and on account of such violation, loss has actually been suffered, as held by this Commission in its Order in Complaint No.1/2011. Therefore, this Commission has heard both the parties only on the question of maintainability of the Petition.

4. This Commission, in Complaint No.1/2011, has held that the person who claims compensation under Section 57(2) of the Electricity Act, 2003, has to establish that:

- (a) the Licensee has failed to meet the standards prescribed by the Commission under Sub-Section (1) of Section 57 of the Electricity Act, 2003; and
- (b) on account of such failure, he has suffered loss, which needs to be compensated.

5. A perusal of the Petition filed does not indicate as to which of the standards of performance specified by this Commission under Section 57(1) of the Electricity Act, 2003 have not been adhered to by the 1<sup>st</sup> Respondent. It is submitted by the Petitioner that as the Petitioner is paying a tariff much higher than the cost of supply, it has a right to get 24 hours of quality power supply. Further, it is contended that under Clause-11 of the Power Supply Agreements dated 13.7.2006 and 10.5.2007, the Respondent has to supply continuous power, except under *Force Majeure* conditions. It is also submitted that under the Conditions of Licence applicable to the Respondent, the Respondent has to take 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, and so far, neither the Commission nor the Respondent have initiated proceedings under Section 23. It is further submitted that since the Petitioner has met the cost of infrastructure created for receiving the power, the Respondent cannot demand for drawal of an express line by the Petitioner.

6. We have carefully gone through the standards specified by this Commission under Section 57(1) of the Electricity Act, 2003 and the terms of the Power Supply Agreement and also the material placed before the Commission.

7. Clause-11 of the Power Supply Agreement does not contemplate continuous supply of power for 24 hours. It only states that the Supplier shall take all precautions to ensure continuity of power to the Consumer at the point of commencement of supply. It is not the case of the Petitioner that the Supplier has not taken all reasonable precautions to ensure continuity of supply to it at the point of commencement of supply. It is the case of the Petitioner that power is not being supplied continuously for all the 24 hours. In our view, Clause-11 of the Power Supply Agreement does not help the Petitioner in any way. On the contrary, it exonerates the Supplier from its liability to the Consumer for the loss it suffered due to interruptions in the supply of power for causes beyond the control of the Supplier. In its reply dated 23.2.2011, produced at Annexure-P8, the Respondent has specifically stated that the interruptions in the power supply were on account of the reasons mentioned therein and has also stated the remedial measures that were being taken by it to improve the supply. Therefore, it cannot be said that the Respondents are not taking all reasonable steps towards fulfilling the obligations undertaken under the Power Supply Agreement. The Conditions of Licence referred to by the Petitioner do not mandate continuous power supply for all the 24 hours, as claimed by the Petitioner and therefore the same also does not advance the case of the Petitioner.

8. The contention of the Petitioner that Demand Charges are collected on the premise and assurance of 24 hours of power supply is

misconceived. It is well known that the Demand Charges are collected to meet the cost of keeping the System in readiness, as a whole, to cater to the needs of all the Consumers, including the Petitioner.

9. There is no standard specified as far as continuous supply of electricity to the Consumers is concerned, under the Standard of Performance, even though it should be the endeavour of the Distribution Licensees to ensure continuous supply subject to the prevailing constraints. It is well recognized that the supply of electricity depends upon various factors, including demand and availability, strength of the System, etc. Clause-4 of the Power Supply Agreement also does not refer to continuous supply of electricity for all the 24 hours. It only deals with the system of supply and not the duration of supply.

10. The Hon'ble Supreme Court, in the case of *Raymond Ltd. And another –Versus- M.P. Electricity Board and others*, reported in **(2001) SCC 534**, while dealing with the question whether minimum charges have to be paid if there are interruptions, has observed that, "...it is futile for the consumers to contend that they will not be liable to abide by the minimum guaranteed charges undertaken, unless on every day of the month/year and during the twenty-four hours or round the clock the load factor and power supply agreed to be made, at one and the (sic) is the same level without any shortfall, tripping or low voltage. ..." It is further observed that, "... It cannot legitimately be contended that the word 'continuously' has one definite meaning only to convey uninterruptedness in time sequence or essence and on the other hand the very word would also mean 'recurring at repeated intervals so as to be of repeated occurrence'. ..."

11. As regards the claim for refund of minimum demand charges, duly following the above Judgment of the Hon'ble Supreme Court, we have to reject the said claim. Payment of Demand Charges is for keeping the System in readiness and not towards energy supplied. Energy Charges are levied on actual consumption and not on minimum basis.

12. Shri Shridhar Prabhu, Counsel appearing for the Petitioner, relied upon the opinion of the learned Attorney-General of India, produced as Annexure – B12, in support of its case. The opinion only suggests that under Section 57(2) of the Electricity Act, 2003, the Commission has to determine the compensation on a case-to-case basis and not by way of automatic imposition through the Regulations. In our view, the opinion of the learned Attorney-General in no way advances the case of the Petitioner.

13. As held by us, the Petitioner has not only failed to show that standards of performance prescribed by this Commission have been violated by the Respondent, but has also not produced any material to show that it has suffered loss on account of not adhering to the Standard of Performance specified, except claiming refund of Demand Charges paid, which is not tenable as held above.

14. Therefore, in our view, the Petition is liable to be dismissed and accordingly the Petition stands rejected.

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

Sd/-  
(VISHVANATH HIREMATH)  
MEMBER

Sd/-  
(K.SRINIVASA RAO)  
MEMBER