

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

Dated : 17th October, 2013

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

APPLICATION No.1/2013

IN

RP No.04/2004

AND

OP No.32/2003

BETWEEN :

Arpee Electrical Pvt. Ltd.

B-5, 1st Floor

Unity Building

J.C. Road

Bangalore-560 002

[Represented by its Managing Director]

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APPLICANT

AND:

- 1) The Managing Director
Bangalore Electricity Supply Company Limited (BESCOM)
14/3, 4th Floor, CFC Building
Nrupathunga Road
BANGALORE – 560 001

- 2) The Assistant Executive Engineer (Elec.)
Bangalore Electricity Supply Company Limited (BESCOM)
Peenya Sub-Division, N-4
Bangalore – 560 058

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RESPONDENTS

[Represented M/s Justlaw, Advocates]

- 1) The present Applicant had filed an Original Petition, OP No.32/2003, seeking refund of the deposits made by it for availing power supply to its SSI Unit at Peenya Industrial Area, Bangalore, along with compound interest at 2% per month.
- 2) The above Original Petition was allowed by this Commission on 8.1.2004, issuing a direction to the Respondent therein to refund the deposit lying with it after deducting 10%, as per the Regulations then prevailing, with simple interest of 6% per annum.
- 3) The present Applicant filed a Review Petition, RP No.04/2004, contending that no deduction of 10% should be made from the deposit and the Respondent has to pay interest at 2% per month, compounded, as prayed by it.
- 4) The Respondent-BESCOM filed a Writ Petition, W.P.No.10168/2004, before the Hon'ble High Court of Karnataka, challenging the above Order dated 8.1.2004 of this Commission. The Hon'ble High Court of Karnataka, vide its Interim Order dated 29.3.2004, stayed the Order dated 8.1.2004 of the Commission, duly recording the 'no objection' of the counsel for the Petitioner therein to deposit a sum of Rs.1,78,292/- within two weeks in the Registry.

5) The Review Petition, RP No.04/2004, of the Applicant was dismissed by the Commission, by its Order dated 20.5.2004, in view of the Interim Order by the Hon'ble High Court in the Writ Petition.

6) The Hon'ble High Court of Karnataka, on 16.11.2006, ultimately dismissed the Writ Petition of the Respondent-BESCOM referred to above, on the ground that there is an alternative remedy available before the Hon'ble Appellate Tribunal for Electricity (ATE) under Section 111 of the Electricity Act, 2003.

7) Accordingly the Respondent-BESCOM filed an Appeal, No.47/2007 before the Hon'ble ATE. The Hon'ble ATE, vide its Order dated 16.5.2007, disposed of the Appeal by consent of the parties and allowed the Respondent therein (present Applicant) to withdraw the amount deposited in the Hon'ble High Court, with accrued interest thereon, towards full and final settlement of the Respondent's claim in the Original Petition, without going into the legal questions raised.

8) The Applicant, against the above Order of disposal by the Hon'ble ATE by consent of the parties, filed Civil Appeal Nos.2707-2708 of 2008 in the Hon'ble Supreme Court. The Hon'ble Supreme Court, by its Order dated 7.4.2008, dismissed the Appeal.

9) The Applicant then filed Review Petition Nos.712-713 of 2008 in the Civil Appeals. The said Review Petitions were dismissed by the Hon'ble Supreme Court, vide Order dated 21.8.2008.

10) The Applicant thereafter filed Curative Petition Nos.165-166 of 2008. These Curative Petitions were also dismissed by the Hon'ble Supreme Court, by Order dated 20.1.2009.

11) Now, the Applicant, after a lapse of more than 9 (nine) years from the date of this Commission's Order, has filed the present Application, praying for recalling of the Commission's Order dated 8.1.2004 and has sought reference of its dispute to an appropriate Forum constituted under Section 42(5) of the Electricity Act, 2003, or in the alternate, to allow it to approach the Forum directly for redressal of its dispute.

12) It is submitted by the Applicant that the Orders of this Commission and the Hon'ble ATE were without jurisdiction, as per the Hon'ble Supreme Court's Judgment in the case of *Maharashtra Electricity Regulatory Commission –Vs- Reliance Energy Limited and another*, reported in **(2007) 8 SCC 381** and therefore are at nullity. Consequently, further Orders passed by the Hon'ble ATE and the Hon'ble Supreme Court in the Review Petition and Civil Appeals are also without jurisdiction and are at nullity, and therefore this Commission has to refer the matter to the Consumer Grievance Redressal Forum (CGRF) under Section 42(5) of the Electricity Act, 2003.

13) We have considered the submissions made by the Applicant, who appeared in person, and also the Judgments cited in support of its contentions.

14) According to us, the Application filed is liable to be dismissed, on the ground of maintainability, as the Order dated 8.1.2004 of this Commission and the Order dated 16.5.2007 of the Hon'ble ATE in Appeal No.47/2007 have become final, consequent to the Orders dated 21.8.2008 and 20.1.2009 of the Hon'ble Supreme Court, and this Commission, in law, cannot go into the validity of the orders of the Hon'ble ATE and the Hon'ble Apex Court, as sought by the Petitioner.

15) The Judgment of the Hon'ble Supreme Court relied upon by the Applicant, reported in **(2007) 8 SCC 381**, in the case of *Maharashtra Electricity Regulatory Commission –Vs- Reliance Energy Limited and another*, in our view, has no application to the present case. The Applicant having invoked the jurisdiction of this Commission, and an Order thereon having been passed, cannot now contend that the Order passed was without jurisdiction. At any rate, the Orders of this Commission and the Hon'ble ATE have become final, as observed above, and the same cannot be re-opened now. Similarly, the Judgments of the Hon'ble Supreme Court, reported in **AIR 1954 SC 340**, in the case of *Kiran Singh and others –Vs- Chaman Pawan and others*, and **AIR 2001 SC 2552**, in the case of *Dhurandhar Prasad Singh –Vs- Jai Prakash University and others*, relied upon by the Applicant have no application to the facts of this case, as the Orders passed earlier were valid Orders and binding on the parties.

16) The Judgment of the Hon'ble Supreme Court, reported in **AIR 1991 SC 2234**, in the case of *Byram Pestonji Gariwala –Vs- Union Bank of India and others*,

does not support the case of the Applicant, as the Orders in this case were passed by this Commission and the Hon'ble ATE, with the consent of the parties.

17) As regards the Judgments of the Hon'ble Supreme Court reported in:

(a) **AIR 1967 SC 1480**, in the case of *B. Shama Rao –Vs- Union Territory of Pondicherry*;

(b) **JT 1991 (3) SC 268**, in the case of *State of U.P. and another –Vs- M/s.Synthetics and Chemicals Ltd. And another*;

(c) **(2009) 3 Mh.L.J. 266**, in the case of *Maharashtra Housing and Area Development Authority –Vs- P.V.Anturkar*; and,

(d) **1997 (93) ELT 641 (SC)**, in the case of *Sun Export Corporation –Vs- Collector of Customs, Bombay*,

on the law of precedents also have no application to the present case, as the Orders passed in this case were based on the facts of the case and they do not lay down any law.

18) In view of the above discussions, the Application filed by the Applicant in RP No.04/2004 and OP No.32/2003, for recalling the Orders, is not maintainable and accordingly dismissed.

Sd/-

(M.R. SREENIVASA MURTHY)
CHAIRMAN

Sd/-

(VISHVANATH HIREMATH)
MEMBER

Sd/-

(K.SRINIVASA RAO)
MEMBER