

No.: N/95/13

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

**Dated : 23<sup>rd</sup> January, 2014**

**Present :**

**Sri M. R. Sreenivasa Murthy, Chairman**

**RP No.07/2013**

**BETWEEN :**

Arpee Electricals Pvt. Ltd.  
B-5, Unity Buildings, I Floor  
J.C. Road  
BANGALORE – 560 002 ..  
*[Represented by its Managing Director,  
Shri R. P. Gupta]*

**PETITIONER**

**AND:**

Bangalore Electricity Supply Company Limited  
K.R. Circle  
BANGALORE – 560 009 ..  
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**RESPONDENT**

1) This Review Petition is filed praying for recalling the Order dated 17.10.23013 passed by this Commission on Application No.1/2013 in RP No.04/2004 and OP No.32/2003.

2) The said Application 1/2013 was filed to recall the Order dated 8.1.2004 passed in OP No.32/2003 and the Order dated 20.5.2004 passed in R.P.No.04/2004. After hearing the parties, Application No.1/2013 was dismissed by this Commission, vide Order dated 17.10.2013.

3) The chronological facts and events have been stated in the Order dated 17.10.2013 passed in Application No.1/2013. The main contention of the Review Petitioner is that this Commission entertained OP No.32/2003 without having inherent jurisdiction to entertain the subject-matter involved in that case. Therefore, the Review Petitioner has contended that the final Order dated 8.1.2004 passed in OP No.32/2003 is null and void, and that all subsequent proceedings before the Hon'ble Appellate Tribunal (ATE) and the Hon'ble Supreme Court are also null and void. For this reason, the Review Petitioner has contended that the Order dated 8.1.2004 passed in OP No.32/2003 should be recalled and the dispute involved in OP No.32/2003 shall be referred to the jurisdictional Consumer Grievance Redressal Forum (CGRF), for a decision.

4) The Review Petitioner had filed OP No.32/2003 before this Commission, with a request to direct the Respondent to refund certain deposits made by him during the years 1987 and 1989, with interest at the 2% per month from the date of deposits. The Respondent had denied its liability to refund the deposits on various grounds.

5) After hearing the parties, this Commission, by its Order dated 8.1.2004, allowed the OP No.32/2003, directing the Respondent to refund the deposits, deducting 10% of the deposited amount as per Regulation 8.08 of the KERC (Electricity Supply and Distribution) Code, 2000-2001, with interest at 6% per annum on the balance deposit, from the date of deposit till the date of payment / adjustment of the refund, and permitted the Respondent to adjust

the amount to be refunded and the interest on it against the future energy bills of the Review Petitioner.

6) The Respondent filed Appeal No.47/2007 before the Hon'ble ATE against the Order dated 8.1.2004 passed by this Commission in OP No.32/2003. By consent of parties, the dispute was settled before the Hon'ble ATE, on 16.5.2007, allowing the Review Petitioner to withdraw the deposit of Rs.1,78,292/- made by the Respondent in the Hon'ble High Court of Karnataka in W.P.No.10168/2004 filed by it, in full and final settlement of the claim made by the Review Petitioner. Subsequently, the Review Petitioner claimed interest on the deposit by filing RP No.28/2007 before the Hon'ble ATE and the same was dismissed. The Review Petitioner also moved the Hon'ble Supreme Court, but ultimately failed to succeed. Finally, the Review Petitioner filed an Application before this Commission under Section 151 of the Code of Civil Procedure for recalling the Order passed in OP No.32/2003 and RP No.4/2004. As already noted, that Application was dismissed by this Commission on 17.10.2013, by a considered Order.

7) Notice was issued to the Review Petitioner for hearing on the admissibility of the Review Petition. The Review Petitioner appeared before this Commission and submitted its Written Arguments. The Managing Director of the Review Petitioner was also heard in person on the admissibility of the Review Petition.

8) The question that arises for consideration is, 'whether there are sufficient grounds for admitting this Review Petition?'

9) After considering the submissions of the Review Petitioner and the facts of the case, the Commission is of the view that there are no justifiable grounds for admitting the Review Petition for the following reasons :

10) The main contention of the Review Petitioner is that OP No.32/2003 was entertained by this Commission without having any jurisdiction to decide the dispute involved in that case. Therefore, the Review Petitioner contends that the Order passed in that Petition is a nullity and hence all subsequent proceedings are also null and void. The Review Petitioner, in support of its contention, has relied upon the decision cited **(2007) 8 SCC 381** in the case of *Maharashtra Electricity Regulatory Commission –Vs- Reliance Energy Limited and others*. The relevant paragraph in the Head Note of the said decision is as follows :

*“C. Electricity – Consumer Complaints / Grievances – Adjudication in respect of – Appropriate / Competent Authority for – Considering that a complete machinery has been provided in Ss. 42(5) and 42(6) of the Electricity Act, 2003 for redressal of grievances of individual consumers, held, wherever a forum/ombudsman has been created under the 2003 Act for redressal of grievances of consumers, the consumers can only resort to these bodies for redressal of their grievances – Hence, where the state concerned had created a proper forum for redressal of grievances of consumers, the Electricity Regulatory*

*Commission had no jurisdiction to adjudicate upon such matter – Even under S.86(1)(f) of the Electricity Act, 2003 the said Commission had no power to adjudicate upon disputes relating to grievance of consumers and it could only adjudicate upon disputes between the licensees and generating companies – Electricity Act, 2003, Ss. 42(5), (6) & 86(1)(f) – Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2003 – Administrative review or revision – Consumer can for redressal of his grievances resort only to the forum created by the statute, herein the Electricity Act,2003."*

11) The Electricity Act, 2003 came into force with effect from 10.6.2003. Earlier to it, the Karnataka Electricity Reforms Act, 1999 was in force with effect from 1.6.1999. Under the Reforms Act, 1999, the Commission had specified under the 'Supply Licence' that the Licensee shall establish with the prior approval of the Commission, a procedure for handling complaints from consumers and the consumer can also approach the Commission in the event of failure or delay on the part of the Licensee in resolving the grievance. The Commission had also framed the Karnataka Electricity Regulatory Commission Consumer Grievance Handling Procedure, which came into effect on 29.6.2000, under which the detailed procedure was specified to deal with the consumer complaints filed before the Commission. Therefore, it is clear that a consumer could have approached the Commission in the event of failure or delay on the part of the Licensee in resolving the grievance.

12) The Review Petitioner, as a consumer, had filed OP No.32/2003 before this Commission on 31.1.2003 for redressal of his grievance against the Distribution Licensee. Therefore, OP No.32/2003 was validly instituted before this Commission for adjudication. It can also be seen that OP No.32/2003 was disposed of on 8.1.2004, on which day also this Commission had jurisdiction to entertain consumer complaints, as per the relevant Regulation framed under the Reforms Act, 1999.

13) After coming into force of the Electricity Act, 2003, the Commission framed the Karnataka Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004, which came into force with effect from 10.6.2004. Under these Regulations, Consumer Grievance Redressal Forum (CGRF) and Ombudsman have been created for redressal of consumer grievances. The complaint of the Review Petitioner was already disposed of before the creation of CGRF and Ombudsman under the above-said Regulations, 2004. Therefore, it is clear that the decision relied upon by the Review Petitioner is not applicable to the facts of the present case.

14) The CGRF and Ombudsman Regulations , 2004 do not contain any provision for transfer of pending proceedings before the Commission to the newly created CGRF or Ombudsman. Therefore, it can be said that the validly instituted pending proceedings could be decided by the Commission even after creation of CGRF and Ombudsman under the above-said Regulations, 2004. It is true that consumer complaints should be filed only

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before CGRF after its creation and the Commission cannot entertain such complaints.

15) The other contention raised by the Review Petitioner is that the Consent Order dated 16.5.2007 passed by the Hon'ble ATE is vitiated, as there was no written and signed agreement between the parties regarding the terms of settlement, and further that the Consent Order was obtained by the other side by playing fraud on the Hon'ble ATE as against the Review Petitioner. Such grievance cannot be made before this Commission and the appropriate Authority to investigate such grievance is only the Hon'ble ATE.

16) For the above reasons, the Commission is of the view that the present Review Petition is liable to be rejected at the admission stage itself, and accordingly the following :

**ORDER**

The Review Petition is hereby dismissed at the stage of admission itself.

Sd/-

(M.R. SREENIVASA MURTHY)  
CHAIRMAN