

No.: N/91/16

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

Dated : 2nd November, 2017

Present:

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

OP No.70/2016

BETWEEN :

- 1) Jnanaganga House Building
Co-operative Society Ltd.(Regd.),
No.365. 10th Main Road, 'C' Block,
J. P. Nagar,
Mysuru – 570 031.
- 2) Raj & Raj Investments,
No.9/A, JTK Extension,
3rd Stage, KHB Colony,
Kuvempunagar,
Mysuru - 5760 023.
- 3) M.N. Associates,
No.9/A, JTK Extension,
3rd Stage, KHB Colony,
Kuvempunagar,
Mysuru - 5760 023.
- 4) SkillTech Engineers & Contractors Pvt.Ltd.,
No.2904, (CH-67), 2nd Floor,
Saraswathipuram,
Mysuru – 570 009.

- 5) Aishvarya Developers (R),
Nos.1278 & 1279,
Lakshmidivinivas,
Gaganachumbi Double Road,
E & F Block, Kuvempunagar,
Mysuru – 570 023.
- 6) Karnataka Small Scale Transformer
Manufacturers Association (R),
No.69/70, Muthuraya Swamy Layout,
Srigandhakavalu,
Sunkadakatte,
Bengaluru – 560 091.

..

PETITIONERS

*[Petitioners are represented by their
Special Power of Attorney Holder,
Shri K. R. Lakshmikantha,
Power Consultant,
No.195-D2, First Floor,
Jaganmohan Palace Road,
Mysuru – 570 024.]*

AND :

- 1) The Additional Chief Secretary,
Government of Karnataka,
Energy Department,
Vikas Soudha,
Bengaluru – 560 001.
- 2) The Managing Director,
Bengaluru Electricity Supply Company Limited,
K.R. Circle,
Bengaluru – 560 001.
- 3) The Managing Director,
Chamundershwari Electricity Supply Corporation Limited,
No.29, Kaveri Grameena Bank Road,
Vijayanagar, 2nd Stage,
Mysuru – 570 019.
- 4) The Managing Director,
Mangalore Electricity Supply Company Limited,
MESCOM Bhavana,
Kavoor Cross Road,
Bejai,
Mangaluru – 575 004.

- 5) The Managing Director,
Hubli Electricity Supply Company Limited,
P.B. Road, Navanagar,
Hubballi – 580 025.
- 6) The Managing Director,
Gulbarga Electricity Supply Company Limited,
Station Road,
Kalaburagi – 585 101. .. RESPONDENTS

*[Respondent-2 is represented by Shri Shahbaaz Hussain, Advocate,
Respondents-3 & 6 are represented by Justlaw, Advocates,
Respondents 4 & 5 are represented by Induslaw, Advocates]*

ORDERS

- 1) The Petitioners 1 to 5 are the land developers, who undertake to form Layouts and building houses and apartments for selling to the public. Petitioner No.6 is the Karnataka Small Scale Transformer Manufacturers Association (R), the members of which are the manufacturers of different types of transformers used for transmission of electricity.
- 2) The Petitioners have prayed for the following reliefs :
- (1) To withdraw the amendments made vide Notification issued by K.E.R.C. vide No.KERC/COS/D/14/14-15 Bangalore Dated 25.08.2014, with immediate effect;
 - (2) To withdraw the proposed amendments vide Notification Nos.888 and 889 in respect of works of the licensees as mentioned above;
 - (3) To refer the matter of execution of works by the licensees to the Government of Karnataka, so that the Government makes the necessary regulations, in respect of works of licensees in accordance with Sections 67 & 68 of the Electricity Act, 2003.

- 3) The material facts required for disposal of this Petition may be stated as follows :
- (a) This Commission has framed the KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004 (hereinafter referred to as the 'Regulations, 2004') vide Notification dated 16.1.2004 and the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, vide Notification dated 17.6.2006 (hereinafter referred to as the 'CoS, 2006'). By Gazette Notification dated 25.8.2014, this Commission has effected certain amendments to the Regulations, 2004 (7th Amendment). Subsequently, this Commission had issued the Draft Amendments dated 30.6.2015, suggesting certain modifications to the Regulations, 2004 (8th Amendment). On the same day, this Commission had also issued the Draft Amendments to the CoS, 2006 (5th Amendment). The first relief, sought for by the Petitioners, relates to the withdrawal of the 8th Amendment to the Regulations, 2004 and the second relief relates to the withdrawal of the Draft of the 8th Amendment to the Regulations, 2004 and the Draft of the 5th Amendment to the CoS, 2006.
- (b) The Petitioners have contended that, the subject-matters covered in the Regulations, 2004 and the CoS, 2006, and their respective amendments stated above, are 'Works of Licensees' and the Rule-making power of which would lie with the appropriate Government under Sections 67 and 68 of the Electricity Act, 2003 (hereinafter referred to as the 'Act, 2003'). The Petitioners have further contended that, for carrying out the

objectives and purposes under Sections 67 and 68 of the Act, 2003, the appropriate Government alone has the Rule-making power, therefore the framing of the above Regulations and the amendments thereof, by this Commission, is without jurisdiction. Therefore, in substance, the Petitioners have requested to withdraw the above-cited Regulations along with their amendments and to refer the matter to the State Government for framing of the necessary Rules in respect of the subject-matters covered under the said Regulations.

- 4) The contesting Respondents have denied the claim made by the Petitioners. They have contended that, the Regulations, 2004 were framed after following the due procedure for carrying out the objectives and purposes stated in Section 46 of the Act, 2003. Further, they have contended that, the CoS, 2006 were framed for carrying out the purposes stated in Sections 45, 47, 48 and 50 of the Act, 2003. They have denied that the subject-matters contained under these Regulations would fall under Sections 67 and 68 of the Act, 2003. Therefore, according to the contesting Respondents, there is no substance in the contentions of the Petitioners and that they are trying to misinterpret the different provisions of the Act, 2003 and mislead the others for deriving undue advantage for themselves.
- 5) We have heard the parties in the case.

- 6) The following issues would arise for our consideration :
- (1) While framing the Regulations, 2004 and the CoS, 2006, whether this Commission has acted within its jurisdiction under the Electricity Act, 2003 to frame the said Regulations?
 - (2) What Order?
- 7) After considering the rival contentions, our findings on the above issues are as follows :
- 8) **ISSUE No.(1)** : *While framing the Regulations, 2004 and the CoS, 2006, whether this Commission has acted within its jurisdiction under the Electricity Act, 2003 to frame the said Regulations?*
- (a) Shri K. R. Lakshmikantha, Special Power of Attorney holder of the Petitioners, submitted that, under the Act, 2003, different authorities like, the Government of India, the Government of Karnataka, the CEA, the CERC, the SERCs and the Appellate Tribunal for Electricity, have been vested with the powers to frame Rules and Regulations in respect of specific subject-matters, as indicated in the different provisions of the Act, 2003 and these authorities cannot usurp the powers vested in each other, while framing the Rules or the Regulations on their respective subjects, for carrying out the purposes of the different provisions of the Act, 2003. We agree with the said statement made by Shri K. R. Lakshmikantha.
 - (b) Part-VIII of the Act, 2003, under the heading "Works of Licensees" contains Sections 67 to 69. These provisions provide for the terms and conditions

on which a Distribution Licensee or a Transmission Licensee can carry out the works on the property of other persons. The Distribution Licensee has a duty to supply electricity to different premises of the consumers within its area of supply. The Transmission Licensee has a duty to lay the transmission lines within the area of its Licence to facilitate the transmission of the electricity. Section 67 of the Act, 2003 provides for the terms and conditions on which the Distribution Licensee can carry out these works on the property of others and the appropriate Government is empowered to frame detailed Rules in this behalf, describing the terms and conditions on which the Distribution Licensee has to carry out its works, for fulfilling its obligations to supply power to its consumers. Sub-Section (2) of Section 67 of the Act, 2003 provides for making Rules, regarding the circumstances in which the consent of the owner or the occupier of a premises is to be taken and which procedure is to be followed, if the owner or occupier objects to and the nature of Notice to be given and the cases in which payment of compensation or rent is to be paid to the affected persons, etc., while carrying out the 'Works of Licensees' on such properties. The other sub-sections of Section 67 of the Act, 2003 provides for the manner in which the dispute regarding compensation is to be decided, etc. Section 68 of the Act, 2003 provides for laying down overhead lines above the ground, with the approval of the appropriate Government, on the terms and conditions, as may be imposed and as may appear necessary to it. Section 69 of the Act, 2003 provides for issuance of Notice to the Telegraph Authority before effecting any works by the Licensees at or near the Telegraph lines and

other works of the Telegraph authority, etc. Therefore, it is clear that, the provisions contained in Sections 67 to 69 in Part-VIII of the Act, 2003 under the heading 'Works of Licensees', provide for the terms and conditions on which the Distribution Licensee or the Transmission Licensee can carry out the works for supply of the electricity to the consumers or while laying the electrical lines on the properties affecting the other persons. In respect of these matters, the appropriate Government is authorized to frame Rules, prescribing a detailed procedure, etc., and the terms and conditions, etc., to carry out the 'Works of Licensees'.

- (c) The Regulations in question deal with entirely different subject-matters than the subject-matters under Sections 67 to 69 of the Act, 2003. These Regulations specify the terms and conditions authorizing the Distribution Licensees to collect charges for carrying out its works for supply of the electricity to its consumers and the detailed procedure to be followed for the supply. Shri K.R. Lakshmikantha, Special Power of Attorney Holder of the Petitioners, could not point out any of the provisions in these Regulations as transgressing the subject-matters covered under Sections 67 to 69 of the Act, 2003. It appears that, the Petitioners are misled by the heading 'Works of Licensees' appearing in Part-VIII of the Act, 2003, that all works to be carried out by the Distribution Licensee and the Transmission Licensee for complying with their obligations and duties, would fall under Sections 67 to 69 of the Act, 2003 and in respect of which, only the appropriate Government has to frame the Rules. As already noted, these Licensees have to carry out their obligations for

supply of the electricity to the consumers, for which the necessary Regulations are to be framed by this Commission, but not by the Central Government or the State Government. However, only when such works are to be carried out affecting the properties of other persons, the Licensees have to follow the Rules prescribed by the appropriate Government under Sections 67 and 68 of the Act, 2003. The Petitioners seem to have not understood the difference between the rule-making power in respect of the subject-matters covered under Sections 67 and 68 of the Act, 2003 and the framing of Regulations, in respect of the subject-matters covered under the Sections 45, 46, 47, 48 and 50 of the Act, 2003. As noted above, the Regulations framed by this Commission are well within its jurisdiction.

(d) For the above reasons, we answer Issue No.(1) in the affirmative.

9) **ISSUE No.(2)** : *What Order?*

For the foregoing reasons, we pass the following:

ORDER

The Petition is dismissed, holding that, the Regulations framed by this Commission are well within its jurisdiction under the Electricity Act, 2003.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER