

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
No. 16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru- 560 052

Dated : 4th October, 2018

Present:

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

Complaint No.10/2017

BETWEEN:

Shri Krishna Kishore M.B.,
GPA Holder for Shri Renwick Angelo Mascarenhas,
Residing at #59, Palm Woods,
S.V. Patel Nagar,
Mysuru – 570 028

.. **PETITIONER / COMPLAINANT**

*[Represented by Shri K.R. Lakshmikantha,
Retired Chief Engineer, KPTCL]*

AND:

- 1) The Managing Director,
Chamundershwari Electricity Supply Corporation Limited,
No.29, Kaveri Grameena Bank Road,
Vijayanagar, 2nd Stage, Hinkal,
Mysuru – 570 019.
- 2) Shri Raghu Prakash N,
General Manager (Technical),
Chamundershwari Electricity Supply Corporation Limited,
No.29, Kaveri Grameena Bank Road,
Vijayanagar, 2nd Stage, Hinkal,
Mysuru – 570 019.

- 3) The Chief Engineer (Electrical),
O & M Zone,
Chamundershwari Electricity Supply Corporation Limited,
Beside 66/11 kV MUSS, Dattagalli Ring Road,
Kanakadasanagar,
Mysuru – 570 022.

.. **RESPONDENTS**

[Respondents represented by Justlaw, Advocates]

ORDERS

- 1) This is a Petition, praying for the following directions against the Respondents:
- (i) To consider the date of registration of the application, for supply of power, as the basis for sanction of power, in accordance with the then existing Regulations of this Commission;
 - (ii) To order compensation of Rs.5,75,00,000/- from the Respondents, for their lapses in not supplying the power, due to which the Complainant had to sustain the above loss; and,
 - (iii) To issue suitable instructions to the General Manager (Technical), Chamundeshwari Electricity Supply Corporation Limited (CESC), for arrogating and interpreting the Regulations of this Commission, without even referring to them.

The above Petition is treated as a Complaint, under Section 142 of the Electricity Act, 2003 (Act) and Notices were issued to the Respondents. In the Complaint, it is alleged that Regulation 3.2.1 of the KERC (Recovery of

Expenditure for Supply of Electricity) Regulations, 2004 (hereinafter, referred to as the 'Regulations, 2004') has been contravened.

2) The facts, relevant for the disposal of this Complaint, may be stated, as follows:

(a) The Petitioner / Complainant, Renwick Anglo Mascarenhas (maybe a Firm or an Association), represented by its GPA holder, Shri Krishna Kishore M.B., has developed a residential layout, measuring 24.5 acres, consisting of 300 and odd residential sites, situated at Chikkahalli Village, Vauna Hobli, Mysuru. The Developer of the layout, filed an application for grant of power supply to the said layout and that application was registered on 14.01.2011, before the jurisdictional Sub-Divisional Office of the CESC. The procedure for supply of power to a newly formed layout is specified in Clause 10 of the Conditions of Supply, 2006 (CoS). The Developer is required to carry out the necessary electrification of the layout, taking into consideration the nature of service required, the anticipated load, the number of street lights required, etc., as per the Guidelines framed by the Distribution Licensee of the area. After electrification of the layout, the individual site owner may apply for supply of power to the individual premises. The expenditure for the electrification of the layout is to be borne by the Developer. Regulation 3.2 of the Regulations, 2004, provides for the expenses to be met with by the Developer of the layout for electrification of the layout, apart from the other conditions to be fulfilled. The main part of Regulation 3.2.1 of the Regulations, 2004, reads thus:

"In case of layouts approved by competent authority, the developer shall execute at his cost the electric line / plant such as extension works including extension of 11 kV line / AB Cable, transformer, LT lines / AB Cable, etc., but excluding improvement / augmentation works in the station and/or works of strengthening of the distribution main, subject to the condition that:

(i)	XXX	XXX	XXX
(ii)	XXX	XXX	XXX
(iii)	XXX	XXX	XXX
(iv)	XXX	XXX	XXX
(v)	XXX	XXX	XXX
(vi)	XXX	XXX	XXX"

- (b) The 3rd Respondent - Chief Engineer (Electrical) of CESC, is the sanctioning authority to approve the electrification of the residential layout and also the expenditure required for it. As per the prevailing norms, the 3rd Respondent sanctioned the electrification of the layout, along with the estimated expenditure required, as per the communication dated 30.08.2012. This sanction letter intimated the Developer to pay a sum of Rs.22,54,750/-, towards his share, for the construction of a new feeder line from the Sub-station, to convey the electricity to this layout and some other newly formed layouts. Further, the said letter intimated to install 12 X 100 kVA transformers in this layout, apart from imposing certain other conditions.
- (c) The Developer objected to the above conditions, in his representation dated 01.01.2013, stating that, the construction of a new feeder line from the Sub-station passing through his layout and the other layouts, would amount

to improvement / augmentation work, which shall be carried out by the Distribution Licensee, but not by the Developer. Further, the Developer requested to permit him to install the required number of 250 kVA transformers, instead of 12 X 100 kVA transformers.

- (d) The Developer's objection to pay a sum of Rs.22,54,750/-, towards his share, for construction of a new feeder line from the Sub-station passing through his layout and the other layouts, was finally upheld by the Respondents and a fresh sanction letter dated 02.03.2015, was communicated to the Developer, along with the revised estimation for the electrification of the layout. However, the request for installing the 250 kVA transformers was not considered in this letter.
- (e) The Developer made a fresh representation dated 04.03.2015 to the Director (Technical) of the CESC, requesting to permit him to install the 250 kVA transformers instead of the 110 kVA transformers. It appears, while processing the request of the Developer for permitting him to install the 250 kVA transformers instead of the 100 kVA transformers, the jurisdictional Assistant Engineer and the Assistant Executive Engineer have prepared a revised estimation of cost dated 08.06.2015 and submitted the same to the sanctioning authority, for his consideration. The request of the Developer for installing the 250 kVA transformers, was allowed by the 2nd Respondent - General Manager (Technical) and the same was intimated to the 3rd

Respondent – Chief Engineer (Electrical), vide the letter dated 06.02.2016. However, in this letter, it was stated that the 250 kVA transformers were to be installed by the CESC, on the basis of 'Deposit Contribution Work' (DCW) mode. The Developer again objected to install the 250 kVA transformers by the CESC through the DCW mode, contending that the 7th Amendment to the Regulations, 2004 has come into effect subsequent to the registration of his application, requesting for the supply of power to his layout.

- (f) Ultimately, the request of the Developer for installing the 250 kVA transformer, on self-execution basis, was allowed by the 2nd Respondent - General Manager (Technical), as per the communication dated 05.05.2016, issued to the 3rd Respondent – Chief Engineer (Electrical).
- (g) When the progress of granting the electrification of the layout stood at this stage, the power sanction intimation dated 02.03.2015 was cancelled, as per the letter dated 03.04.2017, addressed to the Developer by the 2nd Respondent – General Manager (Technical). In this letter, it is stated that the Developer has not complied with the terms and conditions stated in the sanction letter dated 02.03.2015, within the time allowed. Thereafter, the present Petition is filed before this Commission on 20.06.2017.
- (h) Upon Notice, the Respondents appeared through the counsel and filed the Statement of Objections.

- (k) The Respondents have contended that, in order to address the issues with respect to the electrification of new layouts, for supply of energy, the 2nd Respondent-General Manager (Technical) had issued a Circular dated 02.07.2012 (ANNEXURE-R2) and as per the said Circular, the layout Developer was required to construct a feeder line from the Sub-station to the layout, at his expenses. Therefore, it is contended that, the approval dated 30.08.2012, for the electrification of the layout, intimating to deposit a sum of Rs.22,54,750/-, towards the share of the Developer, for laying a new feeder line, was in accordance with the said Circular. Further, the Respondents have contended that, as per the Circular dated 22.06.2011 (ANNEXURE-R3), issued by the 2nd Respondent – General Manager (Technical), installation of the required number of 100 kVA transformers in the new layout was essential. Therefore, they have contended that the Developer was intimated to install 12 X 100 kVA transformers, considering the extent of the area of the layout, but the Developer went on raising objections. It is not denied that, ultimately, the requests of the Developer were allowed. The Respondents have denied the other allegations made against them in the Petition.
- 3) We have heard the learned counsel for the parties and perused the material placed on record. The following issues would arise, for our consideration:

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- (1) Whether the Respondents have contravened Regulation 3.2.1 of the KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004?
 - (2) Whether the Petitioner is entitled to compensation of Rs.5,75,00,000/- from the Respondents?
 - (3) What Order?
- 4) After considering the submissions of the parties and the material placed on record, our findings on the above issues are, as follows:
- 5) **ISSUE No.(1):** *Whether the Respondents have contravened Regulation 3.2.1 of the KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004?*
- (a) Section 142 of the Act provides that, if any person has contravened any of the provisions of the Act or the Rules or the Regulations made thereunder, the Commission may impose penalty, as stated, therein. The Petitioner has contended that there was contravention of Regulation 3.2.1 of the Regulations, 2004 (Recovery of Expenditure). The grievance of the Petitioner is that, the demand for depositing of Rs.22,54,750/-, towards his share for laying a new feeder line from the Sub-station passing through his layout, is not contemplated under Regulation 3.2.1 of the Regulations, 2004. It is pointed out that, the Developer has to incur the expenditure for the electrification of

the new layout, such as cost of electric line / plant, extension works, including extension of the 11 kV line for AB Cable, transformers, LT lines / AB Cable, etc., but excluding the improvement / augmentation works of the Sub-station and/or works of strengthening of the distribution main, as specified in Regulation 3.2.1. Therefore, it is contended that, asking the Developer to incur the cost towards laying of a new feeder line, is a contravention of Regulation 3.2.1.

(b) We have to reject the contention of the Petitioner that there was a contravention of Regulation 3.2.1 of the Regulations, 2004, on the following grounds:

(i) Section 43 of the Act casts a duty on the Distribution Licensee to supply electricity to any premises, within a stipulated time. Section 46 of the Act provides that the State Commission may, by Regulations, authorize a Distribution Licensee to charge from a person, requiring supply of electricity in pursuance of Section 43 any expenses reasonably incurred in providing any electric line or electrical plant, used for the purpose of giving supply. The Regulations, 2004 are framed, to carryout the object of Section 46 of the Act. Therefore, while interpreting Regulation 3.2.1 of the Regulations, 2004, it should be kept in mind that, any expenses, reasonably incurred in providing any electric line or electrical plant, used for the purpose of giving supply of

electricity, are to be borne by the person requiring such supply of electricity. We have already extracted above, Regulation 3.2.1 of the Regulations, 2004, while stating the facts of the case. The said Regulation provides that, the Developer has to incur the cost of the electric line / plant, such as extension works, including extension of the 11 kV line, but excludes the works of strengthening of the distribution main and the improvement / augmentation works in the Sub-station. Regulation 3.2.1 is not clear, as to whether the Developer is required to bear the cost, in case there is need to lay a new feeder line for supply of energy from the Sub-station to his newly developed layout. In the present case, the Respondents found that, from the existing feeder line, the supply of energy could not be given to the layout of the Developer. Therefore, there was necessity to lay a new feeder line from the Sub-station passing through his layout and some other layouts. It is stated by the Respondents that, the new feeder line was laid, as the Developers of the other layouts had contributed their share of the cost for the same and for this layout, from the existing feeder line, the Developer was allowed to extend the 11 kV line, as the Developer went on objecting for contributing his share of the cost to lay a new feeder line. We are of the considered opinion that, some clarity is required in Regulation 3.2.1 of the Regulations, 2004, in this regard.

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- (ii) The Respondents have acted on the basis of the existing Circular dated 02.07.2012 (as per ANNEXURE-2 to their Statement of Objections), issued by the Corporate Office of the CESC, which was existing earlier to the issuance of the approval dated 30.08.2012 for the electrification of the layout. The Respondents are bound by the Circular issued by the Corporate Office. Therefore, their action in asking the Developer to incur a sum of Rs,22,54,750/-, towards his share of the cost, for laying a new feeder line from the Sub-station, cannot be found fault with.
- (iii) It can be seen in the present case that, for one or the other reason, the requests of the Developer were finally accepted by the Respondents. It is only the final action or decision of any person that has to be considered, for ascertaining whether there was contravention of any provision of law. In the present case, as the requests of the Developer were accepted, there cannot be a complaint, alleging contravention of Regulation 3.2.1 of the Regulations, 2004.
- (c) It is appropriate to note the decision of the Hon'ble Supreme Court of India, reported in 1969 (2) SCC 627, in the case of *M/s. Hindustan Steel Limited –Vs- State of Orissa*, dealing with such issues, which reads thus:

“8. ... An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. ...”

- (d) We are of the considered opinion that, in the present case, the Respondents cannot be held to have deliberately contravened any provision of law, even if the contention of the Petitioner is accepted, in view of the principles laid down by the Hon'ble Supreme Court, in the above precedent.
- 6) **ISSUE No.(2):** *Whether the Petitioner is entitled to compensation of Rs.5,75,00,000/- from the Respondents?*
- (a) The Petitioner has claimed a compensation of Rs.5,75,00,000/- from the Respondents for their lapses, in finalising the approval for the electrification of the layout of the Petitioner. The Petitioner has not stated any facts in his Petition, for quantifying the claim for the compensation amount. The compensation is allowed on the basis of the actual loss or damage caused to a party. The relevant facts, for establishing and ascertaining the quantum of loss or damage, are to be pleaded by the party claiming the

compensation. We do not find any such averment in the present Petition, except claiming the total compensation of Rs.5,75,00,000/-.

(b) Therefore, we answer Issue No.(2), in the negative.

7) **ISSUE No.(3):** *What Order?*

(a) One cannot deny that there is some delay in finalising the approval for the electrification of the layout of the Petitioner. We note that, till now, there is no final approval of the electrification of the layout. The estimate dated 08.06.2015 for the expenditure to be incurred on the electrification of the layout in question, is to be approved by the 3rd Respondent-Chief Engineer (Electrical) and a revised approval for the electrification of the layout is yet to be issued by the Respondents. The cancellation of the approval dated 02.03.2015 for the electrification of the layout, has no consequence, because the requirement of issuance of a fresh approval is necessary for the electrification of the layout, on the basis of the cost of the estimate dated 08.06.2015, for the electrification. From the submissions, made during the arguments, it is found that the Developer has almost completed the electrification work, as per the estimate dated 08.06.2015, in anticipation of getting the approval. In view of the delay caused in issuing the final approval, we have to direct the Respondents to carryout the required verification and inspection, by the concerned authorities, of the

electrification work already carried out in the layout, in question and to allow the Developer to carryout the balance works, if any.

(b) For the foregoing reasons, we pass the following:

ORDER

(1) The Complaint is partly allowed, holding that:

- (i) the 3rd Respondent-Chief Engineer (Electrical) shall issue the approval for the electrification of the Petitioner's / Complainant's Layout, based on the estimate dated 08.06.2015, on self-execution basis, with other usual terms and conditions, at the earliest;
- (ii) the Petitioner / Complainant has failed to establish that, any of the Respondents has contravened Regulation 3.2.1 of the KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004; and,
- (iii) The Petitioner / Complainant is not entitled for any other relief(s) claimed in the Complaint.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER