

**ಚಾಮುಂಡೇಶ್ವರಿ ವಿದ್ಯುತ್
ಸರಬರಾಜು ನಿಗಮ
ನಿಯಮಿತ**

(ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಸ್ವಾಮ್ಯಕ್ಕೆ ಒಳಪಟ್ಟಿದೆ)
ನಿಗಮ ಕಾರ್ಯಾಲಯ, ಚಾವಿರನಿನಿ, ಮೈಸೂರು-570017
ದೂರವಾಣಿ ಸಂಖ್ಯೆ: 0821-2343384



**CHAMUNDESHWARI ELECTRICITY
SUPPLY CORPORATION LIMITED**

(A Government of Karnataka Undertaking)
Corporate Office, CESC,
Mysore-570017
Web: www.cescmysore.org
E-Mail: gmhrd@cescmysore.org

Company Identity Number(CIN):- U40109KA2004SGC035177

ಕ್ರಮಾಂಕ: ಸಸ್/ಕಾನೂನು/02/E-62246/2023-24/ *Cys-251*
ಲಗತ್ತು:

ದಿನಾಂಕ:
23 MAY 2023

ಮುಖ್ಯ ಇಂಜಿನಿಯರ್(ವಿ),
ಕಾರ್ಯ ಮತ್ತು ಪಾಲನೆ ವಲಯ,
ಚಾವಿರನಿನಿ, ಹಾಸನ, ಮೈಸೂರು/ಹಾಸನ.

ಎಲ್ಲಾ ಅಧೀಕ್ಷಕ ಇಂಜಿನಿಯರ್(ವಿ),
ಕಾರ್ಯ ಮತ್ತು ಪಾಲನೆ ವೃತ್ತ,
ಚಾವಿರನಿನಿ.

ಎಲ್ಲಾ ಕಾರ್ಯನಿರ್ವಾಹಕ ಇಂಜಿನಿಯರ್(ವಿ),
ಕಾರ್ಯ ಮತ್ತು ಪಾಲನೆ ವಿಭಾಗ,
ಚಾವಿರನಿನಿ.

ಎಲ್ಲಾ ಸಹಾಯಕ ಕಾರ್ಯನಿರ್ವಾಹಕ ಇಂಜಿನಿಯರ್(ವಿ),
ಕಾರ್ಯ ಮತ್ತು ಪಾಲನೆ ಉಪ ವಿಭಾಗ,
ಚಾವಿರನಿನಿ.

ಮಾನ್ಯರೇ,

ವಿಷಯ: Recovery of Back Billing charges from the Consumers as per the provision of Clause 42.05 read with Clause 8.14 of Condition of Supply of Electricity.

ಉಲ್ಲೇಖ: ಪ್ರಧಾನ ವ್ಯವಸ್ಥಾಪಕರು(ಆ ಮತ್ತು ಮಾಸಂ), ಬೆಸ್ಕಾಂ, ಬೆಂಗಳೂರು ರವರ ಪತ್ರ ಸಂಖ್ಯೆ: BESCOM/BC25/190/2016-17/32 ದಿನಾಂಕ: 12.04.2023.

ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, BESCOM ವ್ಯಾಪ್ತಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ Back Billing charges ಬಗ್ಗೆ ಘನ ನ್ಯಾಯಾಲಯವು ಬೆಸ್ಕಾಂ ಪರ ನೀಡಿರುವ ತೀರ್ಪನ್ನು ಎಲ್ಲಾ ಎಸ್ಕಾಂಗಳಲ್ಲಿಯೂ ಇದೇ ರೀತಿಯ ಸನ್ನಿವೇಶಗಳಲ್ಲಿ ಉಪಯೋಗ ಪಡಿಸಿಕೊಳ್ಳಬಹುದೆಂದು ಆದೇಶದ ಪ್ರತಿಯನ್ನು ಪ್ರಧಾನ ವ್ಯವಸ್ಥಾಪಕರು (ಆ ಮತ್ತು ಮಾಸಂ), ಬೆಸ್ಕಾಂ ರವರು ಉಲ್ಲೇಖಿತ ಪತ್ರದಲ್ಲಿ ಈ ಕಛೇರಿಗೆ ಸಲ್ಲಿಸಿರುತ್ತಾರೆ.

ಬೆಸ್ಕಾಂ ವ್ಯಾಪ್ತಿಯ ಉಪವಿಭಾಗಾಧಿಕಾರಿಯು KERC ಯ Conditions of Supply of Electricity ಯ ನಿಯಮ 42.05 ರನ್ವಯ ಗ್ರಾಹಕರು ಬೆಸ್ಕಾಂನ ಅನುಮತಿ ಪಡೆಯದೆ ನಿಯಮ ಬಾಹಿರವಾಗಿ ಬಾಡಿಗೆದಾರರುಗಳಿಗೆ ವಿದ್ಯುತ್ ಸರಬರಾಜು ನೀಡಿರುವುದರ ಮೇರೆಗೆ ರೂ.12,55,47,954/-ಗಳಷ್ಟು ಹಿಂಬಿಲ್ಲನ್ನು ಪಾವತಿಸುವಂತೆ ನೋಟೀಸ್ ನೀಡಿರುತ್ತಾರೆ.

KERC ಯ ನಿಯಮ 8.14 ಮತ್ತು 42.05 ಕ್ಕೆ ತಿದ್ದುಪಡಿ ಆದೇಶ ದಿನಾಂಕ: 22.11.2016ರನ್ವಯ ಸದರಿ ನೋಟೀಸನ್ನು ರದ್ದುಗೊಳಿಸುವಂತೆ ಕೋರಿ ಗ್ರಾಹಕರು ನ್ಯಾಯಾಲಯದಲ್ಲಿ ದಾವೆ ದಾಖಲಿಸಿದ್ದು, ನ್ಯಾಯಾಲಯವು ಗ್ರಾಹಕರ ಪರವಾಗಿ ನೀಡಿದ್ದ ತೀರ್ಪಿನ ವಿರುದ್ಧ ಬೆಸ್ಕಾಂ ಸಲ್ಲಿಸಿದ್ದ ಮೇಲ್ಮನವಿ ಅರ್ಜಿಯನ್ನು ನ್ಯಾಯಾಲಯವು ಪುರಸ್ಕರಿಸಿ ಆದೇಶಿಸಿರುವ ಆದೇಶದ ಪ್ರತಿಯನ್ನು ಮಾಹಿತಿಗಾಗಿ ಹಾಗೂ ಉಪಯುಕ್ತತೆಗಾಗಿ ಈ ಕಛೇರಿಗೆ ಸಲ್ಲಿಸಿರುತ್ತಾರೆ.

ಪು.ತಿ.ನೋ

ಉಲ್ಲೇಖಿತ ಪತ್ರ ಹಾಗೂ ನ್ಯಾಯಾಲಯದ ಆದೇಶದ ಪ್ರತಿಯನ್ನು ಮಾಹಿತಿಗಾಗಿ ಹಾಗೂ ಉಪಯುಕ್ತತೆಗಾಗಿ ಸಲ್ಲಿಸಿದೆ.



ತಮ್ಮ ವಿಶ್ವಾಸಿ,

ಪ್ರಧಾನ ವ್ಯವಸ್ಥಾಪಕರು (ಆ ಮತ್ತು ಮಾಸಂ),
ಚಾವಿ ಸನಿ ನಿ, ಮೈಸೂರು.

SPEED POST



BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED
(Wholly owned Government of Karnataka Undertaking)

BESCOM/ BC25/190/2016-17 / 32
Encl : One Judgement
Email-legalsectionbescom@gmail.com
Ph.08022357555, 22342757.

Corporate Office,
K.R. Circle,
Bangalore - 560 001.
Date: /03/2023.

12 APR 2023

The General Manager (A & HR),
CESC,
No.29, Vijayanagara,
2nd Stage, Hinkal,
Mysuru,
Karnataka -570017.



400658
19/04/23

Sir/Madam,

Sub: Recovery of BBC from the consumers as per the provision of Clause 42.05 read with Clause 8.14 of Conditions of Supply of Electricity.

- Ref:**
1. KERC Notification dated 22/11/2016.
 2. Writ Petition No 5084/2017 order dated 23/10/2019.
 3. Writ appeal No 4017/2019 order dated 16/2/2023.

The consumer of RR No. AKLHT 345, M/s.Radhamani Exports Ltd has challenged the BBC of Rs.2,07,27,758.00 as claimed by the Sub Divisional Officer before the Hon'ble High Court of Karnataka in Writ Petition No.5084/2017 and also requested to consider his representation as per KERC amendment dated 22/11/2016 to the Clause 8.14 and 42.05.

The Hon'ble High Court of Karnataka in its order dated 23/10/2019 has quashed the back billing notice and final order passed by the Sub Divisional Officer and held that the KERC notification dated 22/11/2016 is retrospective in nature and accordingly remanded the matter to the Sub Divisional Officer for fresh consideration.

ಬಿ.ಆರ್.ಎಸ್. (ಬಿ.ಆರ್.ಎಸ್.)
ಬಿ.ಆರ್.ಎಸ್.
ಬಿ.ಆರ್.ಎಸ್.

P.T.O.

After examining the above order BESCO has filed a Writ Appeal by challenging the order of the learned single judge in Writ Petition No.5084/2017.

The Hon'ble Division Bench of High Court of Karnataka has allowed the Writ appeal filed by BESCO (Writ Appeal No.4017/2019) and held that KERC has no power to make regulation with retrospective effect and hence quashed the order passed by learned single judge.

The order dated 16/2/2023 in Writ appeal No.4017/2019 and Writ appeal 3885/2019 are for reaching effect in collection of revenue of ESCOMs.

A copy of the order dated 16/2/2023 is herewith enclosed for reference and make use of the same in similar situation.

Yours faithfully,



C.N.Manjunatha K.A.S
General Manager (A & HR)
BESCO

6/4/2023



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF FEBRUARY 2023

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE S. VISHWAJITH SHETTY

W.A. No.4017 OF 2019 (GM-KEB)

IN

W.P. No.5084 OF 2017 (GM-KEB)

C/W

W.A. No.3885 OF 2019 (GM-KEB)

IN

W.P. No.45093 OF 2015 (GM-KEB)

IN W.A. No.4017 OF 2019

IN W.P. No.5084 OF 2017

BETWEEN:

1. BANGALORE ELECTRICITY SUPPLY
COMPANY LIMITED (BESCOM)
WHOLLY OWNED GOVERNMENT OF
KARNATAKA UNDERTAKING
CAUVERY BHAVAN, K G ROAD
BENGALURU - 560009
NOW REPRESENTED BY ITS
MANAGING DIRECTOR
GENERAL MANAGER (AD AND HRD).
2. ASSISTANT EXECUTIVE ENGINEER (ELE)
AND ASSESSING OFFICER, BESCOM
ANEKAL SUB DIVISION
BENGALURU - 560105.



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And Certified copy of 96

Received

Pages

... APPELLANTS

(BY MR. H.V. DEVARAJU, ADV.,)

AND:

RADHAMANI EXPORTS LTD.,
A COMPANY INCORPORATION UNDER
COMPANIES ACT 1956
HAVING ITS REGISTERED OFFICE
AT NO.176, JAMUNALAL BAJAJ STREET
BURA BAZAAR, GROUND FLOOR
KOLKATA - 700007.

ITS CORPORATE OFFICE AT
NO.27, VTMS ARCADE
YALANKUNTE, MANGAMMANA PALYA
HOSUR MAIN ROAD
BENGALURU - 560068
REPRESENTED BY ITS
AUTHORIZED SIGNATORY

... RESPONDENT

(BY MR. MANMOHAN P.N. ADV.,)

THIS WRIT APPEAL IS FILED U/S 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE
THE ORDER DATED 23/10/2019 PASSED BY THE
LEARNED SINGLE JUDGE IN WP NO.5084/2017 AND
DISMISS THE WRIT PETITION.

IN W.A. No.3885 OF 2019**IN W.P. No.45093 OF 2015**BETWEEN:

1. BANGALORE ELECTRICITY SUPPLY
COMPANY LIMITED (BESCOM)
WHOLLY OWNED GOVERNMENT



OF KARNATAKA UNDERTAKING
CAUVERY BHAVAN, K G ROAD
BENGALURU-560009
NOW REP. BY ITS GENERAL MANAGER
(ADMIN & HR).

2. EXECUTIVE ENGINEER (ELECTRICAL)
BESCOM, CHANDAPURA SUB-DIVISION
BENGALURU-560099.
3. ASSISTANT EXECUTIVE ENGINEER (ELECTRICAL)
BESCOM, CHANDAPURA SUB-DIVISION
BENGALURU-560099.
4. EXECUTIVE ENGINEER
BESCOM VIGILANCE
JAYANAGAR VIGILANCE POLICE STATION
1ST FLOOR, NO.31/1, 32/2
CRESCENT TOWER, CRESCENT ROAD
MADHAVANAGAR, BENGALURU-560001.
5. ASSISTANT EXECUTIVE ENGINEER
BESCOM VIGILANCE
1ST FLOOR, NO.32/1, 32/2
CRESCENT TOWER, CRESCENT ROAD
MADHAVANAGAR, BENGALURU-560001.

... APPELLANTS

(BY MR. S. SRIRANGA, SR. COUNSEL A/W
MS. ASHWINI N. RAVINDRA, ADV.,
MR. S.G. PRASHANTH MURTHY, ADV., FOR
MRS. SUMANA NAGANAND, ADV.,)

AND:

M/S. EUREKA FORBES LIMITED
NO 143, C-4, BOMMASANDRA INDUSTRIAL AREA



OFF HOSUR ROAD, BENGALURU-560099
REPRESENTED BY ITS DIRECTOR
MR. P.J. REDDY
AGED ABOUT 72 YEARS
AUTHORIZED BY BOARD
RESIDING IN BENGALURU.

... RESPONDENT

(BY MR. G. SHIVADASS, SR. COUNSEL FOR
MR. PRASHANTH SHIVADASS, ADV., FOR C/R1)

THIS W.A. IS FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER
DATED 23.07.2019 PASSED BY THE LEARNED SINGLE
JUDGE IN WP NO.45093/2015 AND DISMISS THE WRIT
PETITION IN THE INTEREST OF JUSTICE.

THESE WRIT APPEALS HAVING BEEN HEARD AND
RESERVED FOR JUDGMENT ON 08.02.2023, COMING
ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY,
ALOK ARADHE J., DELIVERED THE FOLLOWING:

COMMON JUDGMENT

In these intra court appeals filed by the
Bangalore Electricity Supply Company (hereinafter
referred to as 'the BESCO' for short), a common
issue viz., whether notification dated 22.11.2016
issued by Government of Karnataka amending the
conditions of supply of electricity of distribution



licences, is retrospective in nature, arises for consideration. These appeals were therefore, heard analogously and are being decided by this Common Judgment. For the facility of reference, facts from W.A.No.3885/2019 are being referred to.

2. The respondent (hereinafter referred to as 'the Company' for short) is the absolute owner of composite premises measuring 2,04,535 square feet situated at Bommasandra Industrial Area of Hosur Road, Anekal Taluk, Bengaluru. The premises consists of 9 independent units / buildings. The company had availed of High Tension Power Supply from the erstwhile Karnataka Electricity Board in the year 1998. The company in the year 2007 entered into a lease agreement with M/s Shell India Markets Pvt. Ltd. and leased out 8 out of 9 units in the composite premises. Thereafter, it applied for an increase in the load of contract demand from 175 KVA



TO 1500 KVA. Subsequently on 09.09.2008, the company submitted an application for additional power supply of 750 KVA.

3. The company thereafter filed an application on 06.05.2015 for a separate meter for same power connection. The premises of the company was inspected by the officers of the BESCOM and it was found that 96% of the power supply was extended to the lessee without authorization of BESCOM. The power supply to the premises of the company was disconnected under Clause 42.05 of Conditions of Supply of Electricity of Distribution Licencees in the State of Karnataka, 2006 (hereinafter referred to as 'the COS' for short).

4. Being aggrieved by the disconnection of power supply, the company filed a writ petition in W.P.No.2269/2015, which was disposed of by an



order dated 05.06.2015 directing BESCO to restore the power supply with the liberty to take appropriate action in accordance with law. The BESCO thereafter served a notice dated 11.06.2015 by which the company was directed to remove the unauthorized extension of power supply and to report compliance. The company was further requested to pay back billing charges of Rs.12,55,47,954/- within a month.

5. The Assistant Executive Engineer (Electrical) passed an order of assessment by which the company was held liable to pay a sum of Rs.12,55,47,954/- as back billing charges for a period from 2007-08 to 2014-15 as per provisions of Clause 42.05 of the COS. The company thereupon filed a writ petition assailing the order dated 22.09.2015 passed by Assistant Executive Engineer (Electrical). The Learned Single Judge by an order dated 23.07.2019 inter alia held that notification dated 22.11.2016



amending COS with respect to Clause 8.14 is retrospective in nature. It was further held that demand made by the Assistant Executive Engineer (Electrical) towards back billing is not founded on any substantial evidence to invoke Clause 42.05 of COS. The order dated 22.09.2015 passed by Assistant Executive Engineer (Electrical) was quashed and the matter was remitted to him to take a decision in accordance with law after affording an opportunity of hearing to the company within a period of four weeks. In the aforesaid factual background, these appeals have been filed.

6. Learned Senior counsel for the appellant submitted that provisions of the Electricity Act, 2003 (hereinafter referred to as 'the Act' for short) do not confer power to enact the Regulations with retrospective effect. Therefore, the question of giving retrospective operation to the Regulations does not



arise. It is further submitted that the notification dated 22.11.2016 itself provides that amended Regulations shall come into force with effect from the date of its publication in the official gazette of Karnataka. Therefore, the question of retrospective operation of Clause 8.14 does not arise. It is urged that wherever the legislature intended to confer the power to enact Regulations with retrospective effect, such a power as been expressly provided. In support of aforesaid submission, reference has been made to Section 40A of Protection of Human Rights Act, 1993, Section 48(2-B) of Life Insurance Act, 1956 and to Section 164 of the Central Goods and Services Tax Act, 2017. Reliance has been placed on decisions of Hon'ble Supreme court in '**SRI.VIJAYALAKSHMI RICE MILLS, NEW CONTRACTORS CO AND OTHERS VS. STATE OF ANDHRA PRADESH** ', (1976) 3 SCC 37, '**ZILE SINGH VS. STATE OF HARYANA AND**



OTHERS', (2004) 8 SCC 1, 'MAHABIR VEGETABLE OILS (P) LTD AND ANOTHER VS. STATE OF HARYANA AND OTHERS', (2006) 3 SCC 620 and 'VICE CHANCELLOR, M.D.UNIVERSITY, ROHTAK VS. JAHAN SINGH', (2007) 5 SCC 77 .

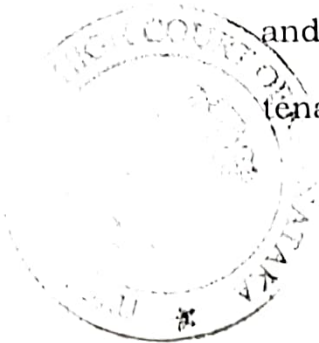
7. On the other hand, Learned Senior counsel for the respondents in W.A.No.3885/2019 submitted that Section 16(1) confers the power on the Commission to issue Notification with retrospective effect. It is further submitted that in terms of Section 56 of the Karnataka Electricity Reforms Act, 1999, the Karnataka Electricity Regulatory Commission had enacted KERC (General and Conduct of Proceedings) Regulation, 2000 (hereinafter referred to as 'Regulations 2000' for short). It is contended that under Regulation 11, the Commission has inherent power to make orders as may be necessary for

meeting the ends of justice and the Regulations do not



limit or otherwise effect the inherent powers. It is pointed out that a petition was filed by BESCO on 09.09.2015 under Regulation 11 of the Regulations 2000 and an amendment was sought to clause 42.05 of KERC Electricity Supply Distribution Board, 2000. The KERC after considering various objections, suggestions and views from the stakeholders, thought it fit to substitute Regulation 8.14 and to add Sub-clause (3) to Regulation 8.14 to specifically state that permitting the tenant to use the power of the same tariff through a sub meter shall not be considered as unauthorized extension of supply or resale of electricity, so long as power charges are collected from the tenant on no profit no loss basis.

8. It is contended that the principle of purposive construction of a statute has to be applied and it is to be held that supply of electricity to a tenant will not amount to unauthorized supply of



electricity. In support of aforesaid submissions, reliance has been placed on decisions of Hon'ble Supreme Court in **'K.R.VENUGOPALAN NAIR VS. STATE OF KERALA AND ORS.'**, 2015 SCC Online 21975, **VINAY VS. STATE OF MAHARASHTRA & ORS.'**, (2006) 6 SCC 289, and **'K.P.VARGHESE VS. INCOME TAX OFFICER, ERNAKULAM AND ORS.'**, (1981) 4 SCC 473 and a full bench decision of this court in **'HASAN CO-OPERATIVE MILK PRODUCERS SOCIETY UNION LIMITED VS. STATE OF KARNATAKA'**, ILR 2014 KAR 4257.

9. Learned counsel for respondent in W.A.No.4017/2019 submitted that the amendment of Clause 8.14 of the Regulations 2000 is clarificatory and has been made to supply an obvious omission, therefore, the amendment to COS is retrospective in nature. It is also argued that Doctrine of Fairness is a relevant factor for construction of statute, which has



to be applied to the facts of this case. Alternatively it is submitted that back billing charges for a period of more than 12 months cannot be recovered from the company. In support of aforesaid submissions, reliance has been placed on decisions in '**ZILE SINGH VS. STATE OF HARYANA AND ORS**', (2004) 8 SCC 1, '**GOTTUMUKKALA VENKATA KRISHAMRAJU VS. UNION OF INDIA AND ORS.**', (2019) 17 SCC 590 and '**GOVERNMENT OF INDIA AND ORS. VS. INDIAN TOBACCO ASSOCIATION**', (2005) 7 SCC 396.

10. We have considered the submissions made on both sides and have perused the record. Before proceeding further, it is apposite to take note of relevant statutory provisions, which read as under:

16. (Condition of licence): *The Appropriate Commission may specify any general or specific conditions which shall apply either to a licensee or class of licensees and*



such conditions shall be deemed to be conditions of such licence:

Provided that the Appropriate Commission shall, within one year from the appointed date, specify any general or specific conditions of licence applicable to the licensees referred to in the first, second, third, fourth and fifth provisos to section 14 after the expiry of one year from the commencement of this Act.

Section 16 empowers the appropriate commission to specify the specific conditions which shall apply either to a licensee or a class of licensees and such conditions shall be deemed to be conditions of licence.

181. (Powers of State Commissions to make regulations): — (1) *The State Commissions may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act. The Electricity Act, 2003*

(2) *In particular and without prejudice to the generality of the power contained in sub-*



section (1), such regulations may provide for all or any of the following matters, namely: -

(a) period to be specified under the first proviso of section 14;

(b) the form and the manner of application under sub-section (1) of section 15;

(c) the manner and particulars of application for licence to be published under sub-section (2) of section 15;

(d) the conditions of licence section 16;

(e) the manner and particulars of notice under clause(a) of subsection (2) of section 18;

(f) publication of the alterations or amendments to be made in the licence under clause (c) of sub-section (2) of section 18;

(g) levy and collection of fees and charges from generating companies or licensees under sub-section (3) of section 32;

(h) rates, charges and the term and conditions in respect of intervening transmission facilities under proviso to section 36;

(i) payment of the transmission charges and a surcharge under subclause (ii) of clause(d) of sub-section (2) of section 39;



(j) reduction 1[***] of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (d) of sub-section (2) of section 39;

(k) manner and utilisation of payment and surcharge under the fourth proviso to sub-clause(ii) of clause (d) of sub-section (2) of section 39;

(l) payment of the transmission charges and a surcharge under subclause(ii) of clause (c) of section 40; 1 The words "and elimination" omitted by Act 26 of 2007, Sec. 21 (w.e.f. 15th June 2007). The Electricity Act, 2003 (m) reduction 1[***] of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (c) of section 40;

(n) the manner of payment of surcharge under the fourth proviso to sub-clause (ii) of clause (c) of section 40;

(o) proportion of revenues from other business to be utilised for reducing the transmission and wheeling charges under proviso to section 41;

(p) reduction 2[***] of surcharge and cross-subsidies under the third proviso to sub-section (2) of section 42;



(q) payment of additional charges on charges of wheeling under subsection (4) of section 42;

(r) guidelines under sub-section (5) of section 42;

(s) the time and manner for settlement of grievances under sub-section (7) of section 42;

(t) the period to be specified by the State Commission for the purposes specified under sub-section (1) of section 43;

(u) methods and principles by which charges for electricity shall be fixed under sub-section (2) of section 45;

(v) reasonable security payable to the distribution licensee under sub-section (1) of section 47;

(w) payment of interest on security under sub-section (4) of section 47;

(x) electricity supply code under section 50;

(y) the proportion of revenues from other business to be utilised for reducing wheeling charges under proviso to section 51;

(z) duties of electricity trader under sub-section (2) of section 52;



(za) standards of performance of a licensee or a class of licensees under sub-section (1) of section 57; 1 The words "and elimination" omitted by Act 26 of 2007, Sec. 21 (w.e.f. 15th June 2007). 2 The words "and elimination" omitted by Act 26 of 2007, Sec. 21 (w.e.f. 15th June 2007). The Electricity Act, 2003 - 131 -

(zb) the period within which information to be furnished by the licensee under sub-section (1) of section 59;

(zc) the manner of reduction of cross-subsidies under clause (g) of section 61;

(zd) the terms and conditions for the determination of tariff under section 61;

(ze) details to be furnished by licensee or generating company under sub-section (2) of section 62;

(zf) the methodologies and procedures for calculating the expected revenue from tariff and charges under sub-section (5) of section 62;

(zg) the manner of making an application before the State Commission and the fee payable therefor under sub-section (1) of section 64;



(zh) issue of tariff order with modifications or conditions under subsection(3) of section 64;

(zi) the manner by which development of market in power including trading specified under section 66;

(zj) the powers and duties of the Secretary of the State Commission under sub-section (1) of section 91;

(zk) the terms and conditions of service of the secretary, officers and other employees of the State Commission under sub-section (2) of section 91;

(zl) rules of procedure for transaction of business under sub-section (1) of section 92;

(zm) minimum information to be maintained by a licensee or the generating company and the manner of such information to be maintained under sub-section (8) of section 128;

(zn) the manner of service and publication of notice under section 130; 1 Subs. by Act 26 of 2007, Sec.21 (w.e.f. 15th June 2007). The Electricity Act, 2003.

(zo) the form of preferring the appeal and the manner in which such form shall be verified



and the fee for preferring the appeal under sub-section (1) of section 127;

(zp) any other matter which is to be, or may be, specified.

(3) All regulations made by the State Commission under this Act shall be subject to the condition of previous publication.

Section 181 deals with the power of the Commissions to make Regulations consistent with the Act and the Rules generally to carry out the provisions of the Act.

11. In exercise of powers conferred under Section 181 (2)(d) of the Act read with Section 16 of the Act, Karnataka Electricity Regulatory Commission by a notification dated 26.11.2016 amended the Conditions of Supply of Electricity of the Distribution licencees in the State of Karnataka, 2006. Regulation 8.14 was also amended by adding clause (3) therein, which reads as under:

(i) The H.T./E.H.T. consumers are permitted to use power within their premises for any bona fide purpose including construction works without exceeding the contract demand or permitted maximum demand/energy entitlement, as the case may be. Such usage shall not amount to prejudicial use.

(ii) The H.T./E.H.T. consumers desirous of using a part of the premises for residential or commercial purposes as the case may be shall be permitted to use power within their premises through a LT sub-meter. The consumption so recorded in the sub-meter shall be deducted from the consumption so recorded in the main meter and the consumption recorded in the sub-meter shall be billed as per applicable LT Commercial tariff in force. In such cases no fixed charged shall be levied on the LT residential or commercial load.

(iii) The H.T./E.H.T. consumer desirous of letting out a part of his premises for industrial purpose shall be permitted to allow his tenant to use the power at the same tariff as applicable to

the said consumer and to collect the charges for the power from such tenant on no profit no loss basis (i.e. sharing of electricity bill) through a sub-meter as approved by the licensee and such arrangement shall not be treated as unauthorized extension of supply or re-sale electricity.

Provided that for billing, the consumption recorded in the main meter shall be reckoned as per the slab rated in accordance with the tariff order in force. (Inserted Vide fifth amendment with effect from 22.11.2016).

Clause (iii) of Regulation 8.14 provides that HT /EHT consumer desirous of letting out part of his premises shall be permitted to allow his tenant to use the power at the same tariff as applicable to said consumer and to collect charges for power from such tenant through a sub meter as approved by the licensee and such arrangement shall not be treated as

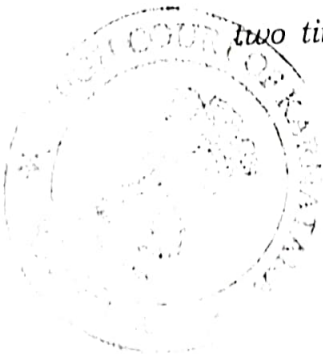


unauthorized extension of supply or re-sale of electricity.

12. Regulation 42.05, which deals with unauthorized extension of supply reads as under:

42.05 Unauthorized extension of supply (Applicable to both HT and LT Installations)

If at any time, energy supplied to a Consumer/premises is found extended unauthorizedly to some other person/premises, the installation shall be disconnected forthwith. The installation shall be reconnected only after unauthorized extension of supply is removed and reported by the Consumer. Further, the Assessing Officer, shall assess the quantum of energy and excess load so extended and charge for that quantum for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of 12 months immediately preceding the date of inspection at two times the Tariff applicable for the purpose

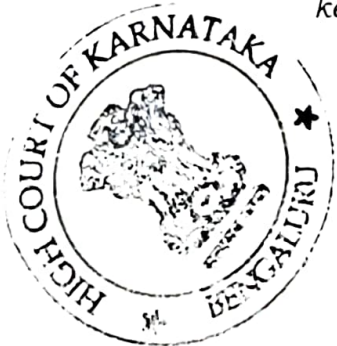


for which the energy is so extended as per the Electricity (Amendment) Act, 2007 (No.26 of 2007) dated 15.6.2007.

Such amount shall be paid within thirty days from the date of final order, failing which, the installation shall be disconnected, and such amount shall be deemed to be arrears of electricity charges.

Note: If the Assessing Officer arrives at the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of 12 months immediately preceding the date of inspection.

2) In respect of installations which are in service for not more than six months and temporary installations, the minimum period specified above may be suitably reduced keeping in view the date of service.



13. It is trite law that every statute shall be construed as prima facie prospective unless expressly or by necessary implication it is made to have a retrospective operation. It is trite law that a power conferred to make a subordinate legislation must be exercised in conformity with the parent Act. A subordinate legislation can be given a retrospective effect and operation if any power in this behalf contained in the main Act. [See: '**HUKUM CHAND VS. UNION OF INDIA**', (1972) 2 SCC 601, '**MAHABIR VEGETABLE OILS P. LTD. VS. STATE OF HARYANA**', (2006) 3 SCC 620, '**VICE CHANCELLOR M.D.UNIVERSITY ROHTAK VS. JAHAN SINGH** (2007) 5 SCC 77 and '**FEDERATION OF INDIAN MINERAL INDUSTRIES AND OTHERS VS. UNION OF INDIA AND ANOTHER**', (2017) 16 SCC 186].

14. The Amendment to the conditions of supply of electricity of distribution licencees by notification



dated 22.11.2016 has obviously been made in exercise of powers under Section 181(2)(d) of the Act, which empowers the State Commission to frame Regulations with regard to conditions of licence under Section 16 of the Act. Though the notification dated 22.11.2016 makes a reference to Section 16 of the Act, but Section 16 of the Act deals with power of the appropriation commission to specify the general or specific conditions either to a licensee or class of licensees and does not deal with the power to make Regulations. Section 181(2)(d) of the Act expressly deals with the power of the commission to frame Regulations and the amendment to the Regulations has been made under Section 181(2)(d) of the Act. The aforesaid provision viz., Section 181 does not confer power on the Karnataka Electricity Regulatory Commission to make regulations with retrospective effect. Therefore, in the absence of a power under the

parent Act, neither the regulations nor amendment to the same can be made with retrospective effect.

15. It is noteworthy that wherever the legislature has intended to confer the power to make the subordinate legislation with retrospective effect, it has expressly said so. For the facility of reference, Section 40A of the Protection of Human Rights, 1993, Section 48A(2-B) of Life Insurance Corporation Act, 1956 and Section 164(3) of Central Goods and Services Tax Act, 2014 are quoted below for the facility of reference.

Section 40A of Protection of Human Rights, 1993

40A. Power to make rules retrospectively.—*The power to make rules under clause (b) of sub-section (2) of section 40 shall include the power to make such rules or any of them retrospectively from a date not earlier than the date on which this Act received the assent of the President, but no such retrospective effect shall be given to*

any such rule so as to prejudicially affect the interests of any person to whom such rule may be applicable.

Section **48A(2-B)** of Life Insurance Corporation Act, 1956

48A(2-B) The power to make rules conferred by clause (cc) of sub-Section (2) shall include -

- (i) the power to give retrospective effect to such rules; and
- (ii) the power to amend by way of addition, variation or repeal, the regulations and other provisions referred to in sub-section (2-A), with retrospective effect from a date not earlier than the twentieth day of June, 1979.

Section 164(3) of Central Goods and Services Tax Act, 2014

Section 164 - Power of Government to make rules

(3) The power to make rules conferred by this section shall include the power to give retrospective



effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.

However, there is no such provision in the Act. Therefore, it has to be held that KERC has no power to make regulations with retrospective effect.

16. In the absence of any provision which either expressly or by necessary implication makes the amendment to the regulations with retrospective effect, no such inference can be drawn that the amendment to Regulation 8.14 is retrospective. In any case, in the absence of a power under Section 181(2)(d) of the Act. Therefore, it has to be held that KERC has no power to make regulations with retrospective effect.

17. The Amendment to the Regulations has not been either expressly or by necessary implication,



made to have retrospective effect. On the other hand, amendment to the Regulation clearly state that they shall come into force on the date of publication in the official gazette. Regulation 1(c) reads as under:

(c) It shall come into force from the date of its publication in the official gazette of Karnataka.

Thus, in view of aforementioned reasons, it is evident that notification dated 22.11.2016 issued by Government of Karnataka amending conditions of supply of electricity of distribution licences is prospective in nature and not retrospective.

18. The contention that Section 16 of the Act confers power on the Commission to issue notification with retrospective effect need not be examined as the issue involved in these appeals is about retrospectivity of legislation. Reliance placed on Regulation 7.3 of Karnataka Electricity Regulatory Commission



(Conditions of Licence for ESCOMs) Regulations, 2004 is of no assistance to the respondents as the same deals with powers of the Commission to make amendments or alterations in the standard agreements on an application made by the licensee or by the affected person. The Regulations have been made in exercise of powers under Section 181(2)(d) of the Act. The inherent powers of the Commission does not empower it to make Regulations with retrospective effect. Neither the principle of purposive construction nor doctrine of fairness is applicable to the fact situation of the case.

19. In view of preceding analysis the impugned orders dated 23.07.2019 and 23.10.2019 passed in W.P.No.3885/2019 and W.P.No.4017/2019 passed by Learned Single Judge cannot be sustained in the eye of law. The impugned orders therefore, are set aside.

However, needless to state that respondents shall be



