

**(2016) 02 KAR CK 0019**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 61555 of 2011**

M/s. Channagiri Cements Pvt. Ltd.

APPELLANT

Vs

Hubli Electricity Supply Co. Ltd.

RESPONDENT

**Date of Decision :** 02-02-2016

**Acts Referred:**

Electricity Act, 2003 — Section 126, 135

**Citation :** (2016) 4 AirKarR 218 : (2016) 3 KCCR 2571

**Hon'ble Judges :** B.S. Patil, J.

**Bench :** Single Bench

**Advocate :** J. S. Shetty, Advocate, for the Petitioner; Shivaraj P. Mudhol, Advocate, for the Respondent; J.S. Associates, Advocate, for the Petitioner; M.B. Kanavi, Advocate, for the Respondent Nos. 1, 4

**Final Decision :** Partly Allowed

## Judgement

B.S. Patil, J.—M/s. Channagiri Cements Private Limited has filed these two Writ Petitions against Hubli Electricity Supply Company Limited (for short "HESCOM") and its officers. In Writ Petition No. 61555 of 2011, petitioner has challenged the order dated 02nd February, 2011 issued by the Assistant Executive Engineer, HESCOM, Mudhol Sub-division, Mudhol, Bagalkot District, produced at Annexure "K". As per the said order, Assistant Executive Engineer has passed a final order holding that for the period from 27th February, 2008 to 17th April, 2010, i.e., from the date of disconnection of electricity supply till the date of reconnection, in terms of Clause 33.00 of the Conditions of Supply of Electricity of the Distribution Licensees in the State of Karnataka for short "Conditions of Supply of Electricity", minimum charges for power supply in accordance with tariff in force from time to time shall be payable by the consumer. The respondent officer has further held that as the installation had been reconnected as per Conditions of Supply of Electricity, meaning thereby the terminated power supply Agreement had been deemed to have been restored from the date of disconnection itself in the same Revenue Register (R.R.) number

which has been continued, demand of charges in a sum of Rs. 27,21,116/- was in accordance with law.

2. In the connected Writ Petition No. 84387 of 2013, petitioner has sought for a writ of mandamus against the respondent/HESCOM and its authorities to refund an amount of Rs. 68,96,044/- along with interest at 18% per annum by considering the representations produced at Annexures "A" to "C".

3. Petitioner has also challenged communication dated 07th August, 2013 Annexure "D" issued by the Assistant Executive Engineer/respondent No. 1 informing that petitioner was not entitled for refund of Rs. 68,98,044/-. Similarly, communications dated 02nd August, 2013 issued by the Executive Engineer (Ele.) ( O&M division), HESCOM, Mudhol, refusing the said request has been also called in question (Annexure "E"). Two other communications vide Annexure "F" dated 01st August, 2013 issued by the General Manager (HESCOM) and communication dated 26th October, 2013 vide Annexure "G" issued by the Assistant Executive Engineer to the same effect and demanding payment of balance charges payable have been also called in question.

4. Facts, briefly stated, leading to the dispute are that, petitioner/company had taken electricity connection for running its manufacturing unit in the process of production of cement. Vigilance squad attached to HESCOM, Mudhol, inspected the factory on 27th February, 2008 and registered a case of theft of electricity noticing that in the underground cable, loop was inserted which had tampered the meter, thereby reducing to a large extent recording of all consumption of electricity. Crime No. 142 of 2008 was registered. The Assistant Executive Engineer issued a provisional bill for Rs. 2,06,88,132/- with compounding charges of Rs. 58,30,000/-, totalling to Rs. 2,65,18,132/-.

5. Petitioner challenged the action of the Assistant Executive Engineer by filing Writ Petition No.9267 of 2008 assailing the demand notice dated 03rd March, 2008. This Court by order dated 12th February, 2009 quashed the provisional demand made and remanded the matter to the Assistant Executive Engineer for fresh disposal in accordance with law by considering the objections filed by petitioner. A fresh order was passed on 23rd April, 2009 reiterating the earlier order holding that petitioner was liable to pay total amount of Rs. 2,06,88,132/- and a sum of Rs. 58,30,000/- towards back billing and compounding charges respectively.

6. This order was challenged in W. P. No.66559 of 2009[GM-KEB]. On 23rd February, 2010, an interim order of stay was granted subject to petitioner depositing 1/3rd of the amount, where after, respondents were directed to restore electricity to the installation of petitioner 2rd of the claim, which came to around Rs. 96,044/-, was deposited by the Company. Thereafter, electricity supply was restored on 18th April, 2010. Subsequently, a demand notice came to be issued on 02nd February, 2011, demanding minimum charges of Rs. 27,21,116/- for the period from 27th February, 2008, the date of disconnection till 18th April, 2010,

the date of reconnection, roughly for a period of 34 months.

7. Contention of the petitioner is that there is no such power vested with respondent authorities to demand minimum charges for the said period, when electricity supply had been admittedly disconnected and all supply lines had been dismantled by the Licensee while initiating action for recovery of dues.

8. It is contended by Sri. J.S. Shetty, learned counsel for petitioner, that as per Clause 33.00 of the Conditions of Supply of Electricity, minimum charges could be collected only under circumstances that fall within the ambit of Chapter IX of the Conditions of Supply of Electricity, that too for a maximum period of six months, as stipulated in Clauses 32.01 to 32.09.

9. It is his next submission that in the instant case, electricity supply had been disconnected on the allegation of theft of electricity imputed against petitioner. But, in the criminal case instituted before the Special Court in Special Case No.3 of 2009, petitioner was acquitted vide judgment and order dated 18th September, 2010. Therefore, theft of electricity alleged against petitioner was not established. As a result, authorities cannot proceed to recover the amount under the guise of minimum charges, even though admittedly entire installation had been dismantled and electricity supply to the establishment had been stopped from 27th February, 2008 till 18th April, 2010.

10. Learned counsel appearing for the respondent/HESCOM submits that minimum charges can be collected even when electricity supply was disconnected on the basis of allegations of theft of electricity, because there was no termination of Agreement between the consumer and Licensee regarding supply of electricity. He urges that, had there been termination of Agreement, then petitioner ought to have applied afresh seeking supply of electricity where after, by following the relevant regulations, fresh Agreement could be entered into for supply of electricity; as long as such procedure was not adopted, matter would fall within the purview of Clause 33.00 and minimum charges were required to be paid.

11. On careful consideration of the entire materials on record, I find from the Conditions of Supply of Electricity, particularly Chapter IX in which Clauses 32 .00 and 33.00 find place, that Clause 32.00 deals with "Agreement and validity for Power Supply Contract" Clauses 32.01 to 32.06 provide for execution of Agreement on stamped paper and procedure to be followed thereon in respect of High Tension (HT) and Low Tension (LT) installations and the officers who are authorised to sign the power supply Agreement; the duration for which power supply Agreement shall be valid and deemed renewal from year to year thereafter, until the Agreement was terminated by either party.

12. Clauses 32.07 and 32.08 of Conditions of Supply of Electricity provide for termination of Agreement, which read as under:

"32.07 Termination of Agreement - If an installation is under disconnection for

non-payment of dues for a continuous period of not less than three months, the Licensee shall serve a three months" notice to the Consumer to get the installation reconnected after payment of dues failing which the power supply Agreement shall be deemed to have been duly terminated on the date of expiry of the said notice, without prejudice to the right of the Licensee to recover forthwith all dues in terms of the Agreement and these Conditions.

32.08 Soon after termination of the supply Agreement the supply lines shall be dismantled by the Licensee and action initiated for recovery of dues."

(Underlining supplied)

13. Thus, it emerges from a reading of various Clauses of Chapter IX, particularly, Clauses 32.07 and 32. 08 that if an installation is under disconnection for non-payment of dues for a period of three months continuously, there is a mandatory duty cast on the Licensee to serve three months" notice to the consumer to get the installation reconnected by paying the dues, failing which power supply Agreement shall be deemed to have been duly terminated on the date of expiry of the period of notice. In other words, after disconnection, Licensee has to serve three months" notice to the consumer to get the installation reconnected by paying dues. If the consumer fails to get electricity supply reconnected, power supply Agreement shall automatically stand terminated after expiry of notice period of three months and thereafter, supply lines shall be dismantled by the Licensee and action has to be initiated for recovery of dues.

14. Thus, in case of disconnection of power supply for non-payment of dues, total length of period for which power supply Agreement would be in force is only six months, because, the deeming provision in Clause 32.07 would operate as per which power supply Agreement gets terminated after lapse of six months from the date of disconnection. The resultant position would be, once the supply Agreement stands terminated, supply lines shall be dismantled by the Licensee. It is in this background, Clause 33.00 of the Conditions of Supply of Electricity lays down that charges for power supply in accordance with the power tariffs in force from time to time shall be payable by consumer until power supply was terminated, irrespective of whether the installation was in service or disconnected. Hence, minimum charges are payable by the consumer till power supply Agreement was terminated, even though the consumer might not be actually using the electricity because of disconnection.

15. As held above, if there is deemed termination on the expiry of three months from the date of disconnection in terms of Clause 32 .07 , then to claim minimum charges for further period, there appears to be no provision.

16. In this case, in the impugned order, Assistant Executive Engineer has invoked Clause 33.00 of the Conditions of Supply of Electricity, which in my view, as held above, cannot be made applicable to collect minimum charges for the period more than six months from the date of disconnection of electricity. Therefore, the

impugned order cannot be sustained insofar as claim for minimum charges and interest on the same is concerned.

17. As regards the contention of learned counsel appearing for the respondents, Sri. Shivaraj P.Mudhol, that where disconnection was brought about due to theft of electricity, such power can be exercised, I do not find any support for this contention in the provisions contained in Chapter IX of the Conditions of Supply of Electricity and in Clause 33.00. In addition, it has to be stated that Criminal Court has acquitted the petitioner.

18. In writ petition No.9055 of 2008, disposed of on 28th January, 2016, this Court, after considering the provisions contained in Section 135 of the Electricity Act, 2003 [for short "the Act"], and relevant regulations contained in Clauses 42.06 and 42.07 of the Conditions of Supply of Electricity has held that if theft of electricity was proved, Special Court would be under obligation to decide civil liability also. But, where the Criminal Court finds the consumer not guilty, question that might arise would be whether the judgment passed by the Special Court finding the consumer not guilty would bar the authorities from recovering the loss caused. It has been found therein that for proof of theft of electricity, mensrea on the part of the consumer was required to be established, whereas for recovery of loss caused on account of misuse of electricity, same was not necessary to be proved and it would be sufficient if there was ample material to establish that electricity was misused from the installation in question thereby causing loss to the electricity Company.

19. This Court has also referred to the provisions contained in Section 126 of the Act, where under Assistant Executive Engineer has to record his finding with regard to unauthorised use of electricity; a provisional order has to be passed and after providing opportunity to the consumer to file his objections, a final order has to be passed considering the objections. Thereafter, if consumer feels aggrieved by the order, it would be open for him to file an appeal before the appellate forum. It has been also held that insofar as the proceedings instituted under Section 135 of the Act, resulting in prosecution before the Special Court, the same cannot be treated as a proceeding under Section 126 of the Act; hence, the order directing demand for payment of electricity charges along with compounding charges could not be sustained by referring to the powers conferred under Section 126 of the Act.

20. In the said case (W.P. No.9055 of 2008), liberty has been reserved to respondent and its authorities to initiate fresh action in accordance with law for misuse of electricity and the resultant loss caused to HESCOM. The amount already paid by petitioner therein has been ordered to be adjusted towards regular dues or the dues to be ascertained or found after holding a fresh enquiry in accordance with law and in case, petitioner were to be found not guilty of any irregularity or misuse of electricity even after fresh proceedings, then petitioner shall be entitled for refund of the amount after adjusting the current dues.

21. In the light of the said order passed in the connected writ petition, as the same factual aspect is involved in these two cases, these two writ petitions deserve to be allowed, by setting aside the impugned orders.

22. Accordingly, Writ Petitions are partly allowed. Impugned orders are set aside. Liberty is reserved to the respondents to initiate fresh proceedings, in accordance with law, for the alleged misuse of electricity. Based on the re-suit of fresh enquiry, the amount already paid in a sum of Rs. 68 ,96,044/- has to be adjusted towards the arrears or current charges, as the case play be, and the balance, if any, may be recovered/refunded based on the findings.