

**Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**

**(Judgment pronounced on 27<sup>th</sup> Sept.2012  
at Chennai Circuit Bench)**

**APPEAL No.141 of 2012**

**Dated: 27<sup>th</sup>Sept, 2012**

**Present : HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM,  
CHAIRPERSON  
HON'BLE MR. RAKESH NATH, TECHNICAL  
MEMBER**

**In the Matter of:**

**Orange County Resorts and Hotels Ltd  
A company incorporated under the  
Companies Act, 1956 having its  
Registered Office at II Floor,  
St. Patrick's Business Complex,  
No.21, Museum Road  
Bangalore-560 025  
(Represented by its Managing Director)**

**...Appellant**

**Versus**

**1. Karnataka electricity Regulatory Commission  
6<sup>th</sup> & 7<sup>th</sup> Floor, Mahalaxmi Chambers  
No.9/2, M.G. Road  
Bangalore-560 001  
(Represented by its Chairman)**

**2. Chamundeshwari Electricity Supply Corporation Limited  
(A company incorporated under the Companies  
Act,1956)**

**Having its Registered office at No.927**

**L.J.Avenue, New KantharajUrs Road**

**Saraswathipuram**

**Mysore – 570 009**

**(Represented by its Managing Director)**

**3. State of Karnataka**

**Department of Energy**

**VikasaSoudha**

**Dr. AmbedkarVeedhi**

**Bangalore-560 001**

**(By its Principal Secretary)**

**...Respondent(s)**

Counsel for the Appellant(s) : Mr. Sridhar Prabhu  
Mr. D.S. Bhat

Counsel for the Respondent(s): Mr. AnandGanesan(R-2)

**J U D G M E N T**

**PER HON'BLE MR. JUSTICE M. KARPAGAVINAYAGAM, CHAIRPERSON**

1. Orange County Resorts and Hotels Ltd., is the Appellant herein.
2. Karnataka State Commission is the 1<sup>st</sup> Respondent.
3. Chamundeshwari Electricity Supply Corporation Ltd., is the 2<sup>nd</sup> Respondent.

4. The Appellant has filed this Appeal challenging the order passed by the Karnataka State Commission on 24<sup>th</sup> May,2012 rejecting the prayer of the Appellant sought for determination and payment of compensation for the loss incurred by it.
5. The facts leading to the filing of this appeal are as follows:-
  - i) The Appellant is the consumer of the Chamundeshwari Electricity Supply Corporation Ltd.,(the Distribution Company, R-2) serviced under HT(2)(b)(ii) tariff category.
  - ii) The Power Supply Agreement was entered into between the Appellant and the Distribution Company(R-2) for an initial quantum of 30 kVA Contract Demand.
  - iii) By another PSA dated 10.5.2007 the Appellant availed additional supply for 150 kVA.
  - iv) The Distribution Company(R-2) under Power Supply Agreement had undertaken to ensure the continuity of power supply under three phases. However, the Distribution Company failed to fulfill its promise of continuous power supply.
  - v) Several letters were sent by the Appellant requesting for the continuous supply but there was no response. In fact, the Appellant paid for all the levies and

demands by the Distribution Company(R-2) for the continuous supply of power.

- vi) The Appellant also was made to pay the Contract Demand charges for the continuous supply through out the day. But the Distribution Company(R-2) supplied power only for about 4 hours and less per day.Thus, there was neither compliance of continuous power supply nor any response to the request made by the Appellant through several letters.
- vii) Ultimately the Distribution Company(R-2) wrote a letter on 23.4.2010 to the Appellant intimating that load shedding was being carried out at the instance of the State Government and as such the undertaking of continuous supply of power by the Distribution Licensee could not be complied with.
- viii) The Appellant filed a petition before the State Commission praying for direction to the Respondent-2 for the payment towards the loss incurred by the Appellant due to the failure to make continuous power supply. The State Commission after hearing the parties rejected the petition through the impugned order on the ground that the petition was not maintainable on the

basis of the objection raised by the Distribution Company(R-2).

6. Aggrieved by this, this Appeal has been filed.
7. The learned Counsel for the Appellant has made the following submissions in order to establish that the order rejecting his petition on the ground of maintainability is not valid in law.
  - i) When the statute as well as Regulations provide for the continuous supply of power, the State Commission ought to have allowed prayer for compensation in the light of the fact that there was no continuous supply of power for 24 hours per day.
  - ii) If the Distribution Company was facing any shortage or supply constraint, it should have approached State Commission for regulation of supply hours under section 23 of 2003 Act. If any such directions are issued under section 23, then the contesting Respondent is free to curtail hours of supply. Admittedly, there is no such restriction imposed under section 23 of the Act. Therefore, continuity of power supply becomes vested right of the consumer.
  - iii) Merely because there was a direction issued by the government(R-3) for short supply, the rights of the

consumer can not be curtailed by violating the commitment and undertaking for continuous supply of 24 hours as mentioned in PPA.

8. On these grounds, it is strenuously contended by the learned Counsel for the Appellant that the impugned order is not sustainable both under law and facts.
9. On the other hand, the learned Counsel for the 2<sup>nd</sup> Respondent, in justification of the impugned order has contended that unless it is shown that specific standard is violated and that on account of such violation, loss had occurred, the Appellant cannot claim for compensation and as such the petition filed before the State Commission was not maintainable.
10. We have heard the learned Counsel for both the parties and carefully considered their submissions. We have also gone through the impugned order and other materials.
11. The only question that arises for consideration is as follows:-  
“Whether the Appellant was entitled in law, to approach the State Commission praying for compensation for the loss suffered on account of load shedding effected by the Distribution Company(R-2)?”

12. Before dealing with this question it will be appropriate to quote the relevant discussion and the finding given by the State Commission in the impugned order:-

**“ We have carefully gone through the standards specified by this Commission under Section 57(1) of the electricity Act, 2003 and the terms of the Power Supply Agreement and also the material placed before the Commission.**

**Clause-11 of the Power Supply Agreement does not contemplate continuous supply of power for 24 hours. It only states that the Supplier shall take all precautions to ensure continuity of power to the Consumer of the point of commencement of supply. It is not the case of the Petitioner that the Supplier has not taken all reasonable precautions to ensure continuity of supply to it at the point of commencement of supply. It is the case of the Petitioner that power is not being supplied continuously for all the 24 hours. In our view, Clause-11 of the Power Supply Agreement does not help the Petitioner in any way. On the contrary, it exonerates the Supplier from its liability to the Consumer for the loss it suffered due to**

**interruptions in the supply of power for causes beyond the control of the Supplier. In its reply dated 23.2.2011, produced at Annexure-P8, the Respondent has specifically stated that the interruptions in the power supply were on account of the reasons mentioned therein and has also stated the remedial measures that were being taken by it to improve the supply. Therefore, it cannot be said that the Respondents are not taking all reasonable steps towards fulfilling the obligations undertaken under the Power Supply Agreement. The Conditions of Licence referred to by the Petitioner do not mandate continuous power supply for all the 24 hours, as claimed by the Petitioner and therefore the same also does not advance the case of the Petitioner.**

**The contention of the Petitioner that Demand Charges are collected on the premise and assurance of 24 hours of power supply is misconceived. It is well known that the Demand Charges are collected to meet the cost of keeping the System in readiness, as a whole, to cater to the**



**needs of all the Consumers, including the Petitioner.**

**There is no standard specified as far as continuous supply of electricity to the Consumers is concerned, under the Standard of Performance, even though it should be the endeavour of the Distribution Licensees to ensure continuous supply subject to the prevailing constraints. It is well recognized that the supply of electricity depends upon various factors, including demand and availability, strength of the system, etc. Clause-4 of the Power Supply Agreement also does not refer to continuous supply of electricity for all the 24 hours. If only deals with the system of supply and not the duration of supply.**

**As regards the claim for refund of minimum demand charges, duly following the above Judgment of the Hon'ble Supreme Court, we have to reject the said claim. Payment of Demand Charges is for keeping the System in readiness and not towards energy supplied. Energy Charges are levied on actual consumption and not on minimum basis.**

**As held by us, the Petitioner has not only failed to show that standards of performance prescribed by this Commission have been violated by the Respondent, but has also not produced any materials to show that it has suffered loss on account of not adhering to the Standard of Performance specified, except claiming refund of Demand Charges paid, which is not tenable as held above.**

**Therefore, in our view, the Petition is liable to be dismissed and accordingly the Petition stands rejected.”**

13. In the light of the finding given by the State Commission referred to above and also in the light of the submissions made by the Appellant and the Respondent in this Appeal, we will now consider the question framed above.
14. The specific prayer made in the petition filed by the Appellant before the State Commission is as follows:-

Wherefore, it is most respectfully prayed that this Hon'ble Commission may be pleased to

- a) Declare that the acts and omissions on the part of the Respondents are violative of the Electricity Act,2003, NTP, NEP, Karnataka

electricity Regulatory Commission(Licensee's Standards of Performance) Regulations, 2004, Karnataka Electricity Regulatory Commission(Conditions of Licence for ESCOMs)Regulations, 2004, the Background Paper published by the Working Group of the forum of Regulators on "Protection of Consumer Interests:

b) Pass order(s) directing the Respondents jointly and severally compensate the Petitioner for the loss caused to the Petitioner as detailed in the Annexure-P-11(Collectively) for the periods in part and for each of day violation and loss caused in future.

15. This petition has been filed under section 57(2) of the Act,2003 read with clause 21 of the Karnataka Electricity Regulatory Commission(General and Conduct of Proceedings) Regulations,2000 seeking for the direction by the State Commission to the Respondents to make the payment of compensation to the Appellant for the loss caused to the Appellant.

16. The main ground raised in the petition is that there was no continuous power supply for 24 hours every day as undertaken by the Distribution Company(R-2) through PPA and there was no direction by the State Commission under section 24 of the Act for regulation of power supply but even then the Distribution Company has failed to meet the standards of performance by not complying with the commitment and undertaking for a continuous power supply and that therefore, it (the Appellant) he is entitled to compensation under section 57(2) of the Electricity Act,2003.

17. Let us quote section 57 of the Act which provides as follows:-

*“57. Standards of Performance of Licensee (1) The Appropriate Commission may, after consultation with the licensees and person likely to be affected, specify standards of performance of a licensee or a class of licensees.*

*(2) If a licensee fails to meet the standards specified under sub-section(1), without prejudice to any penalty which may be imposed or prosecution be initiated, he shall be liable to pay such compensation to the person affected as may be determined by the Appropriate Commission.*

*Provided that before determination of compensation, the concerned licensee shall be given a reasonable opportunity of being heard.*

*(3)The compensation determined under sub-section(2) shall be paid by the concerned licensee within ninety days of such determination.”*

18. Section 57(1) authorizes Appropriate Commission to consult licensees and persons likely to be affected and then specify standards of performance of a licensee or a class of licensees.
19. Section 57(2) provides that if a licensee fails to meet the standards specified, he shall be liable to pay such compensation to the persons affected as may be determined by the Appropriate Commission.
20. Section 57(3) provides that the compensation determined shall be paid by the concerned licensee who is held to be guilty of having failed to maintain the standards of performance of licensee, within 90 days of such determination.
21. On perusal of this section it is evident that if the licensee fails to meet any standard of performance specified under

section(1) of 57 he is liable to pay such compensation to the person affected as determined by the Appropriate Commission.

22. Section 57(2) provides for a case by case determination of compensation. Such compensation has to be paid to the affected person. This will make it clear that the State Commission will have to determine on the basis of allegation that a particular standard of performance had been violated, as to how and what extent the person has been affected due to such violation.
23. The reading of this provision in its entirety would make it evident that a person who made a prayer for compensation in the petition under section 57(2) of the Act,2003, has to satisfy two requirements:-
  - i) The licensee has failed to maintain the particular particularstandard of performance prescribed by the State Commission, specified under sub section 1 of Section 57 of the Act,2003.
  - ii) On account of such failure, he has suffered a loss, which needs to be compensated.
24. In the context of the above requirements, we have to see whether these requirements have been satisfied by the Appellant by specifying as to which of the standards of

performance had been violated and what was the amount of loss occurred to him due to the failure of the Respondent to follow a particular standard of performance.

25. Admittedly, as held by the State Commission the Appellant had neither pleaded in the petition as to which of the standards of performance stated to have been violated and what was the amount of loss suffered by him due to that nor produced any materials before the State Commission to establish the same.
26. According to the Appellant under class-11 of the Power Supply Agreement dated 13.7.2006 and dated 10.5.2007, the Respondent Company has to supply continuous supply for 24 hours except under *force majeure* conditions.
27. Apart from that, it is stated that the Respondent Company had not approached the State Commission to get suitable directions for regulating supply of power under section 23 of the Act. On that basis it is strenuously contended by the Appellant in the light of the commitment under clause-11 of Power Supply Agreement and in the absence of any direction from the State Commission under section 23 of the Act, the Respondent Company is liable to pay the compensation due to its failure to supply continuous power supply.

28. Let us quote class-11 of the Power Supply Agreement.

*Clause 11: Continuity of power supply.*

*“The Supplier shall take all reasonable precautions to ensure continuity of supply of power to the consumer at the point of commencement of supply. However, he shall not be liable to the consumer for the loss due to the interruption in the supply of power by reason of damage to the equipment of the supplier during war, mutiny, riot, strikes or by reason of earth quake, hurricane tempest or any accident of causes beyond the control of the supplier.”*

29. The reading of the clause-11 does not show that Distribution Company was mandated to make continuous supply for 24 hours. It merely states that the Distribution Company shall take reasonable precautions to ensure continuity of power supply to the consumer at the point of commencement of supply. As held by the State Commission, the clause-11 of Power Supply Agreement does not help the Appellant in any way.

30. The reading of clause-11 in its entirety would indicate that it exonerates the supplier from its liability to the Consumer for the loss suffered due to interruptions in the supply of power for the reasons beyond the control of the Supplier.



31. As a matter of fact, the Respondent Company sent a letter dated 23.2.2011, to the Appellant stating that the interruptions in the power supply were on account of the reasons mentioned therein and further stated that remedial measures were being taken by the Respondent Company to improve the supply.
32. That apart, the Conditions of Licence referred to by the Petitioner also do not mandate the continuous power supply for all the 24 hours. Therefore, the contention of the Appellant that Demand Charges were collected on the undertaking and assurance of 24 hours of power supply is not well-founded.
33. As mentioned above, there are no materials furnished by the Appellant to establish as to which of the standards of performance had been violated by the Respondent Company. In the absence of the proof, relating to the failure to follow the particular standard of performance, the question of compensation due to such failure will not arise.
34. The State Commission has relied upon the judgment of Hon'ble Supreme Court reported in (2001) SCC 534 in the case of Raymond Ltd. and another Vs M.P electricity Board and others, which defines the word "continuously".

35. The relevant observation made in the said judgment is as follows:-

“The further claim asserted on behalf of the consumers that since what was agreed to between the parties was to make the supply available continuously except during situations envisaged in Clause 11 of the contract, the failure to effect such supply by the Board renders the very contract relating to the payment of minimum guaranteed charges unenforceable against them, does not merit acceptance in our hands. It cannot legitimately be contended that the word “continuously” has one definite meaning only to convey uninterruptedness in time sequence or essence and on the other hand the very word would also mean ‘recurring at repeated intervals so as to be of repeated occurrence’. That part, used as an adjective it draws colour from the context too, and in the light of the texture of Clause 11 as well as Clause 12 and Clause 23(b) and also Section 22B of the 1948 Act and orders passed therein which are binding with equal force upon both the consumer and the Board, the word is incapable of being construed in such absolute terms as endeavoured by the learned Counsel for the consumers.

36. The above observation made by the Hon'ble Supreme Court would apply to the present case also.

37. In the absence of any material to establish that there was a failure to follow a particular standard of performance specified and due to which it has suffered loss, the State

Commission could not entertain the said prayer made by the Appellant seeking for compensation. As such, impugned order rejecting Petition filed by the Appellant, as not maintainable is perfectly justified.

38. Since we find that there is no infirmity in the impugned order, the same is confirmed. Consequently, the Appeal is dismissed. However, there is no order as to costs.

**(Rakesh Nath)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

Dated: 27<sup>th</sup> Sept, 2012

✓ ~~REPORTABLE/NON-REPORTABLE~~