

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 26TH DAY OF FEBRUARY, 2020

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NOS.6239-6243 OF 2018 (GM-KEB)

&

WRIT PETITION NOS.6270-6274 OF 2018 (GM-KEB)

BETWEEN

1. MANIPAL ACADEMY OF HIGHER EDUCATION,
FORMERLY KNOWN AS MANIPAL UNIVERSITY
MANIPAL EDU BUILDING,
MANIPAL – 576104,
REPSRESENTED BY ITS REGISTRAR.

2. T.M.A. PAI HOSPITAL AND RESEARCH CENTER/
KASTURBA MEDICAL COLLEGE HOSPITAL, ATTAVAR,
MANGALORE – 575001,
REPRESENTED BY ITS DEAN.

3. MANIPAL COLLEGE OF DENTAL SCIENCES,
ATTAVAR, MANGALORE,
REPRESENTED BY ITS DEAN.

4. MANIPAL SCHOOL,
ATTAVAR,
MANGALORE - 575001.
REPRESENTED BY ITS PRINCIPAL.

... PETITIONERS

(BY SRI. MANMOHAN P.N, ADVOCATE)

AND

1. MANGALORE ELECTRICITY SUPPLY COMPANY LIMITED,
PARADIGM PLAZA, NEAR A.B. SHETTY CIRCLE,
MANGALORE – 575001,
REPSRESENTED BY ITS EXECUTIVE ENGINEER.

2. THE SUPERINTENDING ENGINEER,
ELECTRICAL O & M CIRCLE,
POST BOX NO.240, ATTAVAR,
MANGALORE - 575001.

3. ASSISTANT EXECUTIVE ENGINEER (V),
MANGALORE ELECTRICITY SUPPLY COMPANY LIMITED,
SUB-DIVISION-1, ATTAVAR,
MANGALORE - 575001.

4. DIRECTOR (TECHNICAL),
REVENUE APPLATE AUTHORITY ,
CHAMUNDESHWARI ELECTRICITY SUPPLY COMPANY,
CORPORATE OFFICE, NO.29,
VIJAYANAGAR 2ND STAGE, HINKAL,
MYSURU - 570017.

... RESPONDENTS

(BY SRI. H.V. DEVARAJU, ADVOCATE FOR R1-R3;
BY SRI. S. SRIRANGA, ADVOCATE FOR R4)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226
& 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH
THE PROVISIONAL ORDER DATED 27.12.2013 ISSUED BY R-3
VIDE ANNEX-E AND ETC.

THESE WRIT PETITIONS COMING ON FOR PRELIMINARY
HEARING IN B GROUP THIS DAY, THE COURT MADE THE
FOLLOWING:

ORDER

First petitioner is "deemed to be a University" under the provisions of The University Grants Commission Act, 1956; the petitioner Nos. 2, 3 & 4 are the institutions established & administered by the first petitioner; all they are knocking at the doors of Writ Court for assailing the orders dated 27.12.2013, 05.03.2014 & 06.02.2018 made by the answering respondents herein; the net effect of these orders is that the petitioners are required to pay the back billing

charges for the alleged “unauthorized use of electricity”, in a sum of Rupees Two Crore plus.

2. After service of notice, the respondents have entered appearance through their Panel Counsel who vehemently resists the writ petitions making submission in justification of the impugned orders.

3. Brief facts of the case:

a) petitioners are a registered consumer of power supply in HT-22 which they obtained vide application dated 16.10.1998 at Annexure-R1 to the Statement of Objections; the additional power supply that was sought for vide application dated 25.02.2005 came to be sanctioned vide order dated 10.06.2005 at Annexure-R3; the sanction order specifically mentions about the requirement of power for “the **Hospital**” in the “**Existing Building**”; it was specifically assured to the respondent-MESCOM from the side of the petitioners vide letter dated 14.08.2006 at Annexure-R4 “**we will not extend the power supply HT-64 to New Dental College Building**”;

(b) the respondent-MESCOM vide script dated 15.02.2010 made on the petitioner’s application dated

10.02.2010 at Annexure-R5 to the Statement of Objections had specifically endorsed "**Power supply required for Existing Building without addition to Plinth**"; the sketch of the subject premises at Annexure-R8 *prima facie* shows that it is a vast area, in which are brought up; several structures; the respondent-MESCOM officials in the spot inspection of 09.12.2013 discovered that the petitioners had on their own unilaterally carried the power supply through their own cables to other buildings without authorization and having submitted the Inspection Report dated 09.12.2013 to the Vigilance disconnected the power supply; since it was a case of unauthorized use of electricity, the MESCOM made a back billing vide Notice dated 27.12.2013 in a sum of Rs.2,10,52,365/- petitioner's appeal against the same having been negatived, these writ petitions are presented.

4. Having heard the learned counsel for the parties and having perused the petition papers, this Court declines to grant indulgence in the matter for the following reasons:

(a) the original HT power supply to the building in question and subsequent enhancement of power quantum are not in dispute; it is also not in dispute that the petitioners have carried the power supply to other structures by their

own cable arrangement without permission; however the petitioners contend that such arrangement does not require any prior permission of or notice to the MESCOM, since all structures do exist in the very same premises comprised in the undisputed sketch at Annexure-R8 to the Statement of Objections; the said contention cannot be countenanced, because the power supply was “purpose & building specific” and it was not a wholesale supply to the premises as such and all structures erected therein;

(b) petitioners application for power supply and for enhanced power quantum were also “purpose specific & building specific”; the sanction orders in so many words had stated the same; this apart, petitioners had specifically assured to the MESCOM that the power supply would be for the **“existing building without addition to plinth”**; undertaken **“we will not extend the Power Supply HT 64 to New Dental College Building”**; but for this assurance undertaken, the MESCOM would not have sanctioned enhancement of power supply; therefore petitioners would not have tapped the power from the building to which it was sanctioned to other structures in the premises; they are

estopped from contending to the contrary; in fact, a contention to the contrary is unconscionable, to say the least;

(c) the contention of the petitioners that paragraph 42.05 in “Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka” authorizes them to carry/draw the sanctioned power to all other structures in the premises, cannot be countenanced without making violence to the text & context of the said paragraph which the petitioners themselves have reproduced in the writ petition; it reads as under.

*“42.05. Unauthorised Extension of Supply
(Applicable to both HT and LT installations)*

If at any time, energy supplied to a Consumer/premises is found extended unauthorisedly to some other person/premises, the installation shall be disconnected forthwith. The installation shall be reconnected only after unauthorised extension of supply is removed and reported by the Consumer...”

(d) the contention of the petitioners that, this paragraph 42.05 employs the expression “person/premises” and therefore once power is sanctioned to the “premises” the consumer can carry the same to the other structures that exist in the said premises, is bereft of legal force; firstly, the

power is not sanctioned to the premises at all and it is sanctioned only to the **“Existing Building without addition to Plinth”**; petitioners had also undertaken that they would not use the power to the new buildings; the Dictionary Clause of the supply Conditions vide paragraph 2.53 defines “PREMISES” to *include any land, building or structure*; as already stated, the power is sanctioned to the building and not to the premises; if the supply was sanctioned to the ‘premises’, perhaps it would have been a different matter; ‘x’ includes ‘a’, ‘b’ & ‘c’, does not mean ‘b’ is equal to ‘x’, going by sheer logic; thus, the inclusive definition of the ‘premises’ does not come to the aid of petitioners;

(e) the next contention of the petitioners that the word ‘person’ is defined under paragraph 2.48 of the conditions to include “any company, body corporate or association or body of individuals or artificial judicial person,” too does not come to the help of petitioners in any way; this definition only indicates that the registered consumer can be any one of these; it cannot be stretched too far lest its over inclusiveness should breed a lot of mischief; once the power is sanctioned in the name of a person, he becomes the registered consumer for the purpose of levy and other responsibilities; obviously,

the power sanction order specifies the structure/building belonging to him; by no stretch of imagination the above definition can be so widely construed as to enable him to carry the sanctioned power to other buildings belonging to him, even when such buildings exist in the very same premises/area;

(f) the next contention of the petitioners that the paragraph 42.05 has been subsequently amended wherein no separate permission is necessary if the sanctioned power to a building is carried to tenanted premises and therefore the very registered consumer carrying the power to other structures too does not require permission, too does not impress the court; the tenancy spoken of in the amendment should be in respect of the very building which is or any part thereof is leased out; it does not cover the tenanted structures that are not part of the building to which power is sanctioned; this apart, under the amendment no permission is necessary only if the registered consumer has installed in the tenanted premises the “meter approved by the supplier” and not otherwise; in view of this the decision dated 23.07.2019 made by a Co-ordinate Bench of this Court in **M/s. EUREKA FORBES LTD., -vs- BESCO** in W.P.No.45093/2015 (GM-

KEB) does not come to the aid of petitioners, fact matrix of this case being essentially different;

(g) the next contention of the petitioners that the back billing cannot go too much back, twelve months being the reverse limit, computed from the date of inspection, is again bit difficult to countenance; the second part of Paragraph 42.05 of the Supply Conditions which the petitioners themselves have reproduced, reads as under:

“...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.”

the text of above paragraph conditionally speaks of twelve months limit is true; but it is only when the Assessing Officer is unable to ascertain the period during which the unauthorized use of electricity took place; however, when such period is ascertainable, there is no limit for travelling back; an argument to the contrary cannot be sustained without re-writing this paragraph; the subject Supply

Conditions have statutory flavour if not force; in the guise of interpretation, this Court cannot re-write the same;

(h) the last contention of the petitioners that there is absolutely no material for the Assessing Officer to hold that the power is unauthorisedly used from August 2006 to December 2013, again does not merit acceptance; when the new structures were erected by the petitioners is a fact lying especially within their knowledge and therefore they ought to have produced the material for showing when the structures in respect of which unauthorized use of power is alleged were built; it is the petitioners who have custody of sanctioned plan of the structure, building license and such other material; the petitioners are not the persons from rural areas, depressed classes or otherwise disabled; they are a reputed 'Deemed to be University' and the famous institutions run by it; several Law Reports bear testimony to this; therefore, they cannot seek refuge under the leaking umbrella of benefit of doubt; this apart, the MESCOM officials, in original and in appeal proceedings have recorded concurrent findings of fact after giving full opportunity of hearing to the petitioners; Writ Court ordinarily will not undertake a deeper examination of these findings, as if it is a Court of Appeal.

In the above circumstances, these writ petitions being devoid of merits are dismissed. However, the existing power supply shall not be discontinued if the petitioners pay the demand in question including all and whatever interest or other levy accruing due thereon, if any, within a period of two weeks.

Costs made easy.

**Sd/-
JUDGE**

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