

**IN THE HIGH COURT OF KARNATAKA, BENGALURU**

**DATED THIS THE 10<sup>TH</sup> DAY OF OCTOBER 2017**

**BEFORE**

**THE HON'BLE Dr.JUSTICE VINEET KOTHARI**

**WRIT PETITION No.30906/2014(GM-KEB)**

**BETWEEN:**

UNIVERSAL AIR PRODUCTS PRIVATE  
LIMITED  
A COMPANY REGISTERED UNDER THE PROVISIONS  
OF THE COMPANIES ACT, 1956  
HAVING ITS REGISTERED OFFICE AT  
PLOT NO.22 A, 3<sup>RD</sup> STAGE  
PEENYA INDUSTRIAL AREA  
BANGALORE - 560058.  
(REPRESENTED BY ITS MANAGING DIRECTOR). ...PETITIONER  
  
(BY SRI.SHRIDHAR PRABHU, ADV.)

**AND:**

1. BANGALORE ELECTRICITY SUPPLY  
COMPANY LIMITED  
A COMPANY INCORPORATED UNDER THE  
PROVISIONS OF THE COMPANIES ACT, 1956  
HAVING ITS REGISTERED OFFICE AT  
K.R.CIRCLE  
BANGALORE - 560 001  
(REPRESENTED BY ITS MANAGING DIRECTOR)

2. THE ASSISTANT EXECUTIVE ENGINEER (EL)  
BANGALORE ELECTRICITY SUPPLY  
COMPANY LIMITED  
O&M SUB DIVISION  
KUNIGAL - 572 130. ...RESPONDENTS

(BY SRI. VIKRAM V, ADV. FOR SRI S SRIRANGA)

THIS W.P. IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-2 TO PERUSE AND COMPLY WITH THE REQUEST FOR INSTALLATION OF A PREPAYMENT METER CONTAINED IN ANNEXURE – K TO THE INSTALLATION OF THE PETITIONER.

THIS W.P. COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:-

**ORDER**

**Mr.Shridar Prabhu**,Adv. for Petitioner

**Mr.Vikram V**,Adv. for Respondents

1. The petitioner – M/s Universal Air Products Private Limited has filed this petition before this Court on 30.06.2014 with the following prayers:

- (a) *Issue a direction to the 2<sup>nd</sup> respondent to peruse and comply with the request for installation of a Prepayment Meter contained in Annexure –K to the installation of the petitioner;*
- (b) *Consequently, direct the 1<sup>st</sup> respondent to refund the initial security deposit amount deposited with it by the petitioner; and*
- (c) *Grant the cost of this petition and any such other reliefs as is deemed in the present circumstances, in the interests of justice and equity.*

2. The grievance made by the petitioner/company in the present case is that the respondent/BESCOM could not have demanded the Additional Security

Deposit of Rs.99,96,000/- as per their communication – Annexure ‘H’ dated **05.04.2014** on the basis of previous average consumption for two months (2 MMD) and against the already existing security deposit of Rs.31,00,000/-, the Respondent/BESCOM demanded Rs.99,96,000/- as Additional Security Deposit.

3. Learned counsel for the petitioner Mr.Shridhar Prabhu submitted before the Court that Section 47(5) of The Electricity Act, 2003 stipulates that the Distribution Licensee Company, the respondent/BESCOM, is not entitled to require security in pursuance of Clause (a) of Sub-section (1), if the person requiring the supply is prepared to take the supply through a Prepayment Meter. He therefore submitted that since the petitioner-consumer had expressed its preparedness to take the power supply from the respondent/BESCOM through Prepayment Meter vide its Representation–Annexure ‘K’

dated **26.06.2014**, instead of taking steps for installing such Prepayment Meter, the respondent/BESCOM not only insisted upon payment of Additional Security Deposit as aforesaid, but also disconnected the power supply of the petitioner-Company. Hence, the need to approach this Court arose.

4. He further submitted that even if the respondent/BESCOM does not have such Prepayment Meters for industrial connections like that of the petitioner, to which the Tariff Entry HT2(a) applies, the petitioner-Company is even prepared to purchase from open market the said Prepayment Meter at its own cost and get it verified and installed by the authorities of the respondent/BESCOM at the Establishment of the petitioner-Company.

5. He also submitted that since the petitioner-Company as of now is obtaining power from Open Access Facility, the consumption of the petitioner-

Company is so high and the regular consumption charges are being regularly paid by the petitioner-Company and there are no over dues. In that view of the matter, the respondent/BESCOM cannot insist upon the deposit of Additional Security Deposit.

6. On the other hand, learned counsel for the respondent/BESCOM Mr.Vikram V has submitted that Regulation 6 of the Notification No.D/07/7 dated **1.10.2007** notifying the **K.E.R.C. (Security Deposit) Regulations, 2007** vide Annexure R1 on record, the respondent/BESCOM after a general review of the previous consumption charges of the preceding year of the consumer, can demand Additional Security Deposit from the consumer. Learned counsel for the respondent therefore justified the demand of Additional Security Deposit vide Annexure 'H' dated **05.04.2014**. He also urged before the Court that no such Prepayment Meters

for industrial connections are available with the respondent/BESCOM.

7. He further submitted that **Sub-Section (5)** of **Section 47** exempting payment of Security Deposit can be applied only when such Prepayment Meter is actually installed in the establishment of the Consumer/Establishment.

8. Having heard both the learned counsels, this Court is of the clear opinion that the present petition filed by the petitioner-Company was rather misconceived. The demand of Additional Security Deposit when made by the communication – Annexure 'H' dated **05.04.2014** on the basis of review of average consumption charges calculated on 2 MMD basis as permitted by **Regulation 6**, appears to be justified and the petitioner-Company has not even controverted the said demand factually at any point of time. Going through a bad financial phase, it appears that the

petitioner-Company only made a representation to the respondent/BESCOM vide Annexure-‘J’ dated **12.04.2014** to stagger the deposit of the Additional Security Deposit over a period and later on also applied to the respondent/BESCOM vide Annexure ‘K’ dated **26.06.2014** indicating its preparedness to take the power supply through the Prepayment Meter. The case before this Court stands at that level of 2014. Nothing thereafter actually appears to have happened in the form of actual installation of the Prepayment Meter nor re-computation of the amount of Additional Security Deposit by the respondent/BESCOM.

9. Sub-section(5) of Section 47 is extracted hereunder for read reference:

**“47(5):** *A distribution licensee shall not be entitled to require security in pursuance of clause (a) of sub-section (1) if the person requiring the supply is prepared to take the supply through a **Prepayment Meter.**”*

10. A bare perusal of the said provision would indicate that if the consumer is ready to take the supply through a Prepayment Meter, obviously, the regular consumption charges would be deducted from the pre-deposit amount itself and there would not be any justification for licensee like the respondent/BESCOM to demand any Additional Security Deposit and automatically, when the level of pre-deposit is exhausted, the power supply would get disconnected, unless the consumer makes further deposit to keep that Prepayment Meter alive and has the credit balance to be set-off against the regular consumption charges. It is like prepaid cards in mobile phones. However, the said provision does not wipe out the demand of Additional Security Deposit under **Regulation 6**, which is already raised on the basis of preceding years average consumption, which is duly authorized and permitted by **Regulation 6**.

11. **Clauses 6 to 9** of the said regulations which is produced at Annexure-R1 by the respondent/BESCOM are quoted below for ready reference.

**“6. Additional Security Deposit (ASD)**

**6.1 General Review**

*The Licensee shall review the adequacy of the amount of Security Deposit in respect of all Consumers in the first quarter of every year based on the average consumption for the preceding year.*

**6.2 Demand notice for Additional Security Deposit**

*Based on such a review, demand for shortfall in Security Deposit or refund of excess Security Deposit shall be made by the Licensee. However, the Licensee can hold Security Deposit up to Rs.3,000/- at the credit of any Consumer and refund the excess Security Deposit when it is over and above Rs.3,000/-.*

*a) In the case of existing Consumers, from whom 3 MMD had been collected by the Licensee where the monthly billing cycle is in vogue:*

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- (i) *Additional Security Deposit shall not be collected till deposit held at credit falls short of the average bill amount corresponding to two months (2 MMD) in case of monthly billing and three months (3 MMD) in case of bi-monthly billing calculated based on the consumption in the preceding year.*
- (ii) *If the deposit held is more than 120% of the average bill amount corresponding to two months (2 MMD) in case of monthly billing and three months (3 MMD) in case of bi-monthly billing of the preceding year, the Licensee shall refund excess deposit held over and above 120% of the average bill amount corresponding to two months (2 MMD) in case of monthly billing and three months (3 MMD) in case of bi-monthly billing of the preceding year, with in 12 months of the notification of*

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*these Regulations in the first instance and during the first quarter in the subsequent years, through adjustments in the energy bill of the Consumer. However, the limit of Rs.3,000/- for refund of the excess Security Deposit as per clause 6.2 shall be adhered to.*

*b) In case the Licensee fails to refund the excess Security Deposit as per Clause 6.2(a)(ii) of these Regulations, penal interest at 1% per month on the amount of excess Security Deposit for actual days of delay shall be payable to the Consumer for the delay beyond the specified period.*

*c) The bill amount for the purpose of these Regulations shall include only FC/DC plus EC and not any other charges like the Electricity Tax, arrears, audit short claim, interest, back billing charges, penal charges for excess consumption/demand.*

*d) Additional Security Deposit shall be demanded when the deposit held falls short of the average bill amount corresponding to two months (2 MMD) in case of monthly billing and three months (3 MMD) in case of bi-monthly billing calculated based on the consumption in the preceding year. However, if the shortfall is less than Rs.200/- in case of LT categories and Rs.1000/- in respect of HT installations, the same need not be demanded.*

*e) Whether the Consumer is required to pay Additional security Deposit, the Licensee shall serve a minimum 30 days' notice containing necessary particulars effective from 1<sup>st</sup> day of April of that year. The notice shall indicate that in case the ASD is not paid within 30 days, the installation shall be liable for disconnection. In case the Consumer has no objections on the amount demanded, the Additional Security Deposit shall be paid within 30 days, the installation*

*shall be liable for disconnection. In case the Consumer has no objections on the amount demanded, the Additional Security Deposit shall be paid within 30 days of the date of demand. In case the Consumer has any objections for the said demand, he may file his objections within 7 days from the date of receipt of such demand notice. The amount of ASD demanded may be revised based on the information, if any, furnished by the Consumer. The Licensee shall furnish all the necessary details to justify the claim of ASD within 7 days of the receipt of objection. In case of revised demand, the payment shall be made within 15 days of the date of revised demand.*

*f) The refund/ recovery amount shall be rounded off to nearest Rs.10/-*

**6.2 Disconnection for non- payment of Security Deposit for the electricity supplied.**

*If a Consumer fails to pay the Security Deposit demanded by the Licensee in terms of clause 6.2(d), the Licensee shall disconnect the power supply to the installation without further notice. Any arrears due on this account shall be deemed to be arrears of electricity charges.*

**7. Mode of Payment of Security Deposit**

- i. ISD shall be paid in the form of cash/demand draft (DD)/Bank Guarantee drawn in favour of the Licensee.*
- ii. ASD shall be paid in the form of cash/demand draft (DD)/Cheque/Bank Guarantee drawn in favour of the Licensee.*

**8. Interest on Security Deposit**

*The Licensee shall pay interest on Security Deposit (ISD, ASD & Meter Security Deposit) of the Consumer as specified under K.E.R.C. (Interest on Security Deposit) Regulations, 2005. However, this Clause is not applicable to the Security Deposit paid in the form of Bank Guarantee.*

**9. Refund of Security Deposit**

*The Licensee, on termination of the agreement by either party shall refund ISD, ASD & Meter Security Deposit (if any) after adjustment of dues, if any, within two months from the date of termination failing which interest at 1% per month shall be payable on the ISD, ASD & Meter Security Deposit for the actual days of delay.”*

12. In view of the aforesaid, the petitioner-Company could not have insisted that merely because it has communicated its preparedness to get the Prepayment Meter installed at its Establishment, it will automatically stand discharged of its obligation to deposit the Additional Security Deposit demanded by the respondent/BESCOM under Annexure 'H' dated - **5.04.2014**. The said demand of Additional Security Deposit made cannot be said to have been per se hit by the aforesaid provisions of **Section 47(5)** of the Act.

13. The words “prepared to take the supply through a Prepayment Meter” cannot be construed to mean that such requirement of security deposit will go away merely on the communication of the consumer conveying its willingness to take the power supply through the Prepayment Meter. Unless the fact of installation of the Prepayment Meter happens, the requirement to make the Security Deposit or Additional Security Deposit cannot be wished away by the Consumer. The words “prepared to take supply through the Prepayment Meter” have to be read in conjunction with the words, “a distribution licensee shall not be entitled to require security”. The said words of entitlement of licensee to demand Annual Security Deposit will go away, only if the Prepayment Meter is actually installed at the request of consumer. The interpretation of **Section 47(5)** other way round, as canvassed by the learned counsel for the petitioner would defeat the very provision for demand of Annual

Security Deposit, if merely on the indication of their willingness to take power supply through Prepayment Meter, it was to be construed as a negation of the right of the licensee/BESCOM to demand such security deposit.

14. The purpose of Security Deposit or Additional Security Deposit is to ensure that the consumer not only pays the regular consumption charges regularly, but in case there is a default in payment of such regular consumption charges, the respondent/BESCOM can always adjust the amount of Security Deposit lying with it against such consumption charges. It is to safeguard the interest of revenue and recovery of the consumption charges of the licensee. Therefore, such a provision cannot be interpreted in a distorted manner to defeat the very purpose of demand of security deposit.

15. Having said so, this Court also cannot lose sight of the contention by the learned counsel for the

respondent/BESCOM that such Prepayment Meters were not even available with the respondent/BESCOM to be installed at the Establishment of the petitioner-Company.

16. In view of this, no such mandamus direction can also be given to the respondent/BESCOM to install such Prepayment Meter at the industrial establishment of the petitioner-Company. If the relevant Regulations permit the petitioner-Company to purchase such Prepayment Meter of standard quality from the open market, which upon due verification by the authorities of the respondent-BESCOM, can be so installed at their industrial establishment, the petitioner is always free to approach the respondent-BESCOM with such a Prepayment Meter and file a representation and it is for the authorities of the respondent-BESCOM to consider the said request of the petitioner fairly and objectively.

However, no such mandamus direction of the Court process is required to be given in such cases.

17. As far as the demand of Additional Security Deposit already made is concerned under Annexure 'H' dated **05.04.2014**, the petitioner-Company is directed to make deposit of the same and if in fact, the Prepayment Meter can be installed at the industrial establishment of the petitioner-Company later on, at the time of final settlement of the Bills of the petitioner-Company for the consumption charges already incurred by them, with that stage, the adjustment/refund of such Additional Security Deposit can always be made by the respondent-BESCOM.

Therefore, with the aforesaid observations and directions, the petition is disposed of. No order as to costs.

**Sd/-  
JUDGE**