

KARNATAKA ACT 35 OF 2001
THE ELECTRICITY (KARNATAKA AMENDMENT)
ACT, 2001

ARRANGEMENT OF SECTIONS

Sections:

1. Short title, extent and Commencement
2. Amendment of section 39
3. Insertion of new sections 49B to 49I

STATEMENT OF OBJECTS AND REASONS

In the Budget Speech for the year 2001-2002, the Hon'ble Chief Minister has made an announcement on the floor of the House that suitable legislation will be introduced in the next session of the Assembly to curb theft of power which would include severe punishment and establishment of Special Court to deal with such crimes.

Therefore, in order to achieve the above object, it is considered necessary to amend the Electricity Act, 1910 (Central Act 9 of 1910) in its application to the State of Karnataka to provide for the following,-

(1) The provision to extend the period of punishment from three years to five years with a minimum period of not less than three months and with fine which may extend to fifty thousand rupees but which shall not less than five thousand rupees and the person who commits offence and convicted for an offence punishable under this Act is debarred from getting any supply of energy for a period which may be extended to two years but which shall not be less than three months.

(2) Provision for compounding of offence by the specially empowered officer of the electricity utility for the first offence only.

(3) Provision for deposit of compensation is made mandatory before granting of stay or suspension of operation of the order of the Special Court.

Hence the Bill.

(Vide L.A. Bill No. 19 of 2001 File No. 11A/11AE 20 11A, 11AE 2001)

KARNATAKA ACT 35 OF 2001

(First Published in the Karnataka Gazette Extra-ordinary on the Eleventh day of December, 2001)

THE ELECTRICITY (KARNATAKA AMENDMENT) ACT, 2001

(Received the assent of the President on the third day of December, 2001)

An Act further to amend the Electricity Act, 1910 in its application to the State of Karnataka.

Whereas, it is expedient further to amend the Electricity Act, 1910 (Central Act 9 of 1910) in its application to the State of Karnataka, for the purposes hereinafter appearing;

Be it enacted by the Karnataka State Legislature in the Fifty-Second year of the Republic of India, as follows:-

1. Short title, extent and Commencement.- (1) This Act may be called the Electricity (Karnataka Amendment) Act, 2001.

(2) It extends to the whole of the State of Karnataka.

(3) It shall come into force on such ¹[date]¹ as the State Government may by notification appoint and different dates may be appointed for different provisions of this Act.

2. Amendment of section 39.- In section 39 of the Electricity Act, 1910 (Central Act 9 of 1910) (hereinafter referred to as the principal Act),- in Section 39,

(i) for the words "imprisonment for a term which may extend to three years, or with fine which shall not be less than one thousand rupees, or with both", the words "imprisonment for a term which may extend to five years but which shall not be less than three months and with fine which may extend to fifty thousand rupees but which shall not be less than five thousand rupees" shall be substituted;

(ii) the following proviso shall be inserted at the end, namely:-

"Provided that a person who is convicted of an offence punishable under this Act shall be debarred from getting any supply of energy for a period which may extend to two years but which shall not be less than three months."

3. Insertion of new sections 49B to 49I.- After section 49-A of the principal Act, the following sections shall be inserted, namely:-

"49B. Compounding of offences.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any officer of an electricity utility specially empowered in this behalf by the State Government may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of energy punishable under this Act, a sum of money by way of compounding for the offence as the State Government may by notification specify from time to time.

(2) On the payment of such sum of money in accordance with sub-section (1), any person or consumer, if in custody in connection with that offence shall be discharged forthwith and no other proceedings shall be instituted or continued against such consumer or person in any criminal court.

(3) The acceptance of the sum of money for compounding of an offence in accordance with sub-section (1) by the officer specially empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973.

(4) The compounding of an offence under sub-section (1) shall be allowed only in respect of the first offence committed by any person or consumer.

Explanation:- For the purposes of this section and sections 49-C to 49-I the word 'Electricity Utility' means a "licence-holder" under section 19 of the Karnataka Electricity Reform Act, 1999 (Karnataka Act 25 of 1999) to transmit or supply energy.

49C. Constitution of Special Court.- For the purposes of providing speedy trial of the offences under this Act and for determining compensation to be awarded to the Electricity Utility, the State Government may, with the concurrence of the High Court of Karnataka, by notification, specify for each district or two or more districts, a court of District and Session Judge to be a Special Court.

49D. Procedure and Powers of the Special Court.- (1) Notwithstanding anything contained in this Act, the Special Court may either suo-motu or on a complaint under section 50, take cognizance of such cases arising out of any alleged act of theft of energy whether before or after the commencement of this Act, and pass such orders (including orders by way of interim directions) as it deems fit:

Provided that if in the opinion of the Special Court, any complaint filed before it is prima-facie frivolous or vexatious, it shall reject the same without any further enquiry.

(2) Notwithstanding anything contained in the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973 or the Karnataka Civil Courts Act 1964 any case in respect of an alleged act of theft of energy under sub-section (1) shall be triable only in the Special Court and the decision of the Special Court shall be final.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, it shall be lawful for the Special Court to try all offences punishable under this Act.

(4) Nothing contained under this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 and the High Court may exercise such powers including the powers under clause (b) of sub-section (1) of that section as if the reference to Magistrate included also a reference to a special court constituted under section 49C.

(5) No person accused of or suspected of the Commission of an offence under this Act shall be released on bail by any Court other than a Special Court or the High Court.

(6) The Special Court shall determine the order in which the civil and criminal liability against a consumer or a person be initiated. It shall be within the discretion of the Special Court whether or not to deliver its decision or order until both civil and criminal proceeding are completed. The evidence admitted during the criminal proceeding may be made use of while trying the civil liability. But the additional evidence, if any, adduced in the civil proceedings shall not be considered by the Special Court while determining the criminal liability. Any person accused of theft or the abetment thereof before the Special Court shall be a competent witness for the defence and may give evidence on

oath in disproof of the charge made against him or any person charged together with him in the criminal proceedings:

Provided that he shall not be called as a witness except on his own request in writing or his failure to give evidence shall not be made the subject of any comment by any of the parties or the Special Court or give rise to any presumption against himself or any person charged together with him at the same proceedings.

(7) Every case under sub-section (1) shall be disposed of finally by the Special Court as far as possible within a period of six months from the date of institution of the case before it.

(8) Every finding of the Special Court with regard to any alleged act of theft of energy shall be conclusive proof of the fact of theft of energy and of the person or consumer who committed such theft.

(9) It shall be lawful of the Special Court to pass such order as it may deem fit to advance the cause of justice. It may award compensation in terms of money for theft of energy which shall not be less than an amount equivalent to twelve months assessed quantity of the energy committed theft of at three times of tariff rate applicable to the consumer or person as per the guidelines issued by the State Government and the amount of compensation shall be recovered as if it were a decree of civil court:

Provided that the Special Court shall, before passing an order under this sub-section give to the consumer or person an opportunity of making his representation or of adducing evidence, if any, in this regard, and consider every such representation and evidence.

(10) Notwithstanding anything in the Code of Civil Procedure 1908, the special Court may, subject to such rules as the State Government may by notification make in this behalf and the provisions of this Act follow its own procedure which shall not be inconsistent with the principles of natural justice and fairplay, while deciding the amount of compensation to be awarded to the Electricity utility.

(11) Notwithstanding anything contained in Section 260 or 262 of the Code of Criminal Procedure 1973, every offence under this Act shall be tried in a summary way by the special Court and the provisions of Sections 263 and 265 of the said Code shall, as far as may apply to such trial.

(12) Any case, pending before any court or other authority immediately before the constitution of a special Court as would have been within the jurisdiction of such Special Court, shall stand transferred to the Special Court as if the cause of action on which such suit or proceeding is based had arisen after the constitution of the Special Court.

49E. Special Court to have the Powers of the Civil Court and Court of Session.- Save as expressly provided in this Act, the provisions of the Code of Civil Procedure, 1908, the Karnataka Civil Courts Act, 1964 and the Code of Criminal Procedure, 1973, in so far as they are not inconsistent with the provisions of this Act, shall apply to the proceedings before the Special Court and for the purpose of the provisions of the said enactments, the Special Court shall be deemed to be a Civil Court, or as the case may be, Court of Session and shall have all powers of a Civil Court and a Court of Session

and the person conducting a prosecution before the Special court shall be deemed to be a Public Prosecutor.

49F. Appeal and revision.- The High Court may exercise, so far as may be of the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 and parts VII of the Code of Civil Procedure 1908 as if a special Court within the local limits of the jurisdiction of the High Court is a District Court, or as the case may be, the Court of session trying cases within the jurisdiction of the High Court.

49G. Review.- The Special Court may on a petition or otherwise and in order to prevent miscarriage of justice review its judgment or order passed under section 49-D, but no such review shall be entertained except on the ground that it was passed under a mistake of fact, ignorance of any material fact or any error apparent on the face of the record:

Provided that the Special Court shall not allow any review petition and set aside its previous order or judgment without hearing the parties affected.

49H. Deposit of Compensation.- (1) In any proceeding before the High Court against the Judgement or order of the Special Court awarding compensation, no stay or suspension of the operation of such judgement or order or any other interim order of like nature shall be granted unless the compensation awarded by such judgement or order is deposited into the High Court.

(2) The Electricity utility concerned on an application made by it in this behalf shall be permitted to withdraw the amount so deposited under sub-section (1) subject to the result of such appeal or proceeding.

(3) If such appeal or Proceeding is finally decided against the Electricity Utility, the amount so withdrawn under sub-section (2) shall be redeposited to the credit of such appeal or proceeding within one month from the date of such final decision.

(4) The provisions of this section shall have effect notwithstanding anything contained in the Code of Civil Procedure, 1908.

49-I Disputes relating to Meters.- Notwithstanding anything contained in sub-section (6) of section 26 and the Schedule of this Act or any judgement or order of any court, a Special Court constituted under this Act shall have jurisdiction to decide any dispute relating to correctness or otherwise of any meter.”

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1. The Act came into force w.e.f. 10.4.2002 by notification. Text of the notification is at the end of the Act.

¹[Notification-I

**No. DE 3 PSR 2001, Bangalore,
Dated 3rd April, 2002**

In exercise of the powers conferred by sub-section (3) of Section 1 of the Electricity (Karnataka Amendment) Act, 2001 (Karnataka Act 35 of 2001), the Government of Karnataka hereby appoints the Tenth day of April 2002 to be the date on which all the provisions of the said Act shall come into force.

By order and in the name of the Governor of Karnataka,

B.K. Srinivasa Rao

Under Secretary to Government,
Energy Department.