

(1991) 04 KAR CK 0011

In the Karnataka High Court

Case No : Regular Second Appeal No. 702 of 1980

Assistant Engineer (Elec)

APPELLANT

Vs

Manoranjan Pvt. Ltd.

RESPONDENT

Date of Decision : 12-04-1991

Acts Referred:

Karnataka Electricity Regulations, 1948 — Regulation 28

Citation : (1991) ILR (Kar) 2698 : (1991) 2 KarLJ 258

Hon'ble Judges : Ramachandriah, J

Bench : Single Bench

Advocate : B.H. Mahesh Babu, for C.R.V. Swamy, for the Appellant; S.K. Joshi, for the Respondent

Final Decision : Dismissed

Judgement

Ramachandriah, J.—The decision of this second appeal filed by the Karnataka Electricity Board (K.E.B) represented by its Assistant Engineer at Athani centres round the interpretation of Regulation 28 of the Karnataka Electricity Supply Regulations as in force in 1977. The relevant portion of Regulation No. 28(a) reads thus:

"28. FAULTY METERS:

(a) In the event of the meter being out of order for any reason during any month, the consumption for that month will be determined on the basis of the average consumption over the preceding three months" period and the bill for the month will be prepared accordingly and become payable by the consumer. The faulty meter will be replaced by another one in good working order immediately or the same will be repaired and reinstalled as expeditiously as possible."

2. The relevant facts are as under:

Respondent-plaintiff is a Company called M/s. Manoranjan Private Limited doing

business in Cinema at Athani. Reading of consumption of electric energy as recorded in the meter installed at the premises of the plaintiff bearing installation No. R.R.1085 could not be recorded for the month of April 1977 as it was burnt. Therefore, the K.E.B. acting under Regulation 28 prepared a bill for Rs. 510-10 by taking the average of the highest consumption of electric energy by the plaintiff during the months of April 1976, September 1976 and January 1977 at 1003, 679 and 751 units respectively by striking average consumption for the said 3 months at 811 units and called upon the plaintiff to remit that amount within the prescribed time failing which the electric connection would be disconnected to the Cinema building. Plaintiff was of the view that the K.E.B. ought to have taken the average of the consumption of electric energy for the preceding 3 months from January to March 1977 of the same year as per Regulation 28 and not of the highest consumption in 3 months in the previous one year. Apprehending that the K.E.B. may disconnect electric supply to the Cinema building if they did not pay Rs. 510.10 p. claimed in their bill issued for the month of April, 1977, plaintiff filed a suit against the K.E.B. in O.S.98/1977 for a decree of perpetual injunction restraining the K.E.B. from cutting of electric supply to their installation No. 1085 for not paying the amount claimed in the bill for the month of April 1977 prepared on the basis of the highest consumption recorded during the 3 months mentioned above. K.E.B. resisted the suit by contending that the bill for the month of April, 1977 sent by it was in accordance with Regulation 28(a). The trial Court accepted the defence of the K.E.B. and dismissed the suit. Therefore, plaintiff filed R.A.65/1978 in the Court of the Civil Judge, Belgaum. By Judgment dated 16-1-1980, the learned II Additional Civil Judge, Belgaum took a contrary view and held that the K.E.B. ought to have prepared the bill for the month of April 1977 by taking the average consumption of electric energy for the 3 months from January to March 1977 as per Regulation 28(a) and decreed the suit by allowing the appeal of the plaintiff. Hence, this second appeal by the K.E.B. It is admitted for considering the following substantial question of law:-

"Whether the lower Appellate Court correctly interpreted Regulation 28A(1) of the Karnataka Electricity Supply Regulations?

3. A reading of the impugned judgment of the lower Appellate Court would give an impression that it has proceeded to decide the appeal on the basis of Regulation 28(a)(i) of the Regulations as amended or subsequently promulgated. It reads as under:-

"28. FAULTY METERS:

(a)(i) In the event of the energy meter of an installation being out of order for any reason (other than tampering by a human agency) the installation may be back billed for a maximum period of six months or for such period as may be in the circumstances of the case deemed appropriate, on the basis of the average of the highest consumption recorded during any three months of the year in which the fall in consumption is noticed and in cases where that is not possible,

then on the basis of the average of the highest consumption recorded during any three months of the preceding year. The faulty meter will be replaced by another one in good working order immediately or the same will be repaired and reinstalled as expeditiously as possible."

4. "Year" as defined in the Regulation that was prevailing in 1977 as well as in the subsequent Regulation means the calendar year. What is a "calendar year" is not clarified either in the old Regulation or in the subsequent Regulation. But, in the Karnataka Electricity Board Electricity Supply Regulations, 1988 "Calendar Year" is defined thus:-

"Calendar Year" shall mean the period between the first day of January of an year and the thirty first of December, of the same year."

Regulation 29.02 in 1988 Regulations reads thus:-

"29.02. If the meter is found not recording (for any reason other than tampering) the consumer will be billed for a period of not more than six billing months preceding the date of inspection/testing on the basis of the average energy consumption of the immediately preceding 3 (three) billing months when the meter was recording properly plus demand/fixed charges.

Notwithstanding, where it is established that a meter is out of order only for a few days in a billing month, the consumption for such period shall be computed on pro-rata basis of the consumption recorded for the remaining number of days in the billing month.

Also, where the recorded consumption is not available fully for three preceding billing months, the available consumption of such lesser period shall be deemed sufficient for computing the consumption, provided consumption of atleast one full billing month is clearly established. Notwithstanding anything specified in this condition, the quantity of electricity supplied shall be assessed by the Board on the basis of production figures of usage of electricity or on such other basis as the Board may keep proper."

5. In my opinion, even a plain reading of the above extracted Regulation 28(a) bearing the heading "Faulty Meters" that was prevailing in 1977, bill for the month in which the faulty meter did not show the correct reading of the electric energy consumed in that month ought to have been prepared on the basis of the average consumption over the preceding 3 months" period and that would be the amount that would become payable by the consumer. Therefore, the K.E.B. had to prepare the bill for the month of April, 1977 by taking the average consumption of electric energy during the preceding 3 months viz., January to March, 1977, as has been pleaded by the plaintiff in the plaint and not on the basis of the highest recording in any 3 months during the period of 12 months immediately preceding the month in which the faulty meter did not show the recording. The said procedure adopted by the K.E.B. cannot be regarded as proper even if it is possible to say that "the year" had to be understood in the

sense of 12 months immediately preceding the month in which the faulty meter did not record the correct reading inasmuch as in the instant case the meter was burnt in the month of April, 1977. What Rule 28(a)(i) bearing the heading "Faulty Meters" extracted above contemplates is that the amount payable by the consumer will have to be first determined on the basis of the average of the highest consumption recorded during any 3 months of the year in which the fall in consumption is noticed and it was only in case it was not possible to do so, then on the basis of the average of the highest consumption recorded during any 3 months of the preceding year. But, in the instant case, it was possible for the K.E.B. to determine the average of the highest consumption by taking into consideration the meter readings in the months of January, February and March, 1977. Therefore, it was not permissible for the K.E.B. to take into consideration the meter readings as recorded in the months of April and September 1976 and January 1977. In my opinion, it was permissible for the K.E.B. to do so if the faulty meter did not record the correct reading either in the month of January or February or even March of the year as there were no 3 clear months in that calendar year.

6. Viewed from any angle, therefore, the bill sent by the K.E.B. to the plaintiff claiming Rs. 510.10 p. for 811 units for the month of April, 1977 was not justifiable and, on the other hand, the stand taken by the plaintiff in their plaint is quite in conformity with the provisions of Regulation 28(a) that was prevailing in 1977.

7. Consequent upon my above conclusion, the impugned Judgment of the lower Appellate Court does not call for interference.

8. In the result, the appeal is dismissed with liberty to the appellant-K.E.B. to prepare a fresh bill for the month of April, 1977 by taking the average of the electric energy consumed by the plaintiff during the months of January to March, 1977 and then to send a revised bill to the plaintiff calling upon them to make payment of the amount claimed in the revised bill within the prescribed period if the amount so claimed is already not paid by the plaintiff as asserted by them. Till then, defendant-K.E.B. shall not disconnect electric supply to the installation bearing RR No. 1085 of the plaintiff,

9. Having regard to the facts and circumstances of the case, both parties are directed to bear their own costs throughout.