

(2006) 11 KAR CK 0068
In the Karnataka High Court
Case No : Writ Petition No. 39771 of 2001

Dr S.R. Anil Kumar

APPELLANT

Vs

The State of Karnataka, The Karnataka Electricity Board and
The Assistant Executive Engineer Electrical Karnataka
Electricity Board

RESPONDENT

Date of Decision : 16-11-2006

Acts Referred:

Electricity Supply Regulations — Regulation 9

Citation : (2007) 1 KarLJ 373 : (2007) 1 KCCR 84

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Ravi B. Naik, for the Appellant; Asha M. Kumbargerimath, HCGP for R-1 and N.K. Gupta, for R2 and 3, for the Respondent

Judgement

N.K. Patil, J.—The petitioner, assailing the correctness of the order dated 13th September 2001 bearing No. AEE(E)/Ch.Puram/5114-16 passed by third respondent vide Annexure G and demand notice dated 16th October 2001 bearing No. AEE(E)/Ch.Puram/5795-98 vide Annexure G1, has presented the instant writ petition.

2. The grievance of the petitioner in the instant writ petition is that, petitioner is the owner of the "Village Health Club" formed in Sy. No. 106, Nanjangud Road, Mysore. Petitioner has filed the necessary application seeking electricity supply to his installation. Accordingly, the second respondent has serviced the installation of the premises of the petitioner through the Meter bearing No. A-14535 and connected a load of 28.4 KW to the installation of the petitioner. Thereafter, petitioner has filed one more application for sanction and connection of additional load of 45 KW vide his application dated 14th September 1995. The said request of the petitioner was also considered and an additional load of 45 KW was sanctioned on 17th March 1997 and the service was effected from 21st March 1997 as per the conditions incorporated in the intimation dated 17th March 1997

and that, thereafter, petitioner has been regularly paying the electricity bill.

3. When things stood thus, the Vigilance Squad of the respondents - Company have made the spot inspection on 27th January 1999 and during the said inspection, they found that, by mistake or inadvertence, they have sanctioned and connected the additional load without collecting the augmentation charges from the petitioner. The said fact has been pointed out by Vigilance Squad of the respondents - Company and the same has been intimated to the concerned Jurisdictional Officer - the third respondent herein. Accordingly, the Jurisdictional Officer - third respondent has communicated, calling upon the petitioner to pay the augmentation charges of Rs. 1,12,500/- vide their order dated 20th March 1999. Assailing the correctness of the said order, petitioner filed a writ petition in W.P. No. 10990/1999 before this Court and this Court by its order dated 16th June 1999 disposed of the said writ petition, directing the petitioner to treat the said order as show cause and file his objections and further directed the respondents to consider the objections to be filed by petitioner and take a decision after providing an opportunity to the petitioner. Thereafter, petitioner filed his objections to the show cause notice on 5th August 1999. Accordingly, the respondents have passed an order on 15th March 2000 directing the petitioner to pay the augmentation charges of Rs. 1,12,500/-. It is the case of petitioner that, without considering the objections filed by petitioner, the respondents have passed a non speaking order. Therefore, being aggrieved by the same, petitioner has filed another writ petition in W.P. No. 10717/2000 before this Court. This Court by its order dated 23rd July 2001 has allowed the said writ petition and set aside the order and remitted the matter back to third respondent with a direction to pass an order afresh after considering the objections filed by petitioner. Pursuant to the said order passed by this Court, the respondents have issued the impugned order dated 13th September 2001 by considering and rejecting the objections filed by petitioner and directing the petitioner to pay a sum of Rs. 1,12,500/- towards augmentation charges. Further, the respondents have stated in the said order dated 13th September 2001 that, as per the amendment to Regulation 9 of the Electricity supply Regulations vide Board letter dated 18th January 1996 in No. KEB/B11/B10/6948/90-91 "in cases of extending additional power supply to old buildings which are having power supply prior to 6.10.1995, augmentation charges at Rs. 2,500/- per KW is to be collected as per Reg. 9.05 Note (b)". Being aggrieved by the said order passed by the third respondent vide Annexure G, as referred above, petitioner herein felt necessitated to present the instant writ petition seeking appropriate reliefs as stated supra.

4. The principal submission canvassed by the learned Counsel for petitioner is that, the impugned order passed by the third respondent is without authority of law, on the ground that, in respect of the installation of the petitioner, an additional load of 45 KW was sanctioned on the basis of the application filed by the petitioner on 14th September 1995. Further, he submitted that, as per the Notification dated 4th November 1998 vide Annexure D and the circular dated

18th November 1998 vide Annexure E, respondents do not have any power to claim any augmentation charges retrospectively nor the petitioner is liable to pay the augmentation charges and that, he is liable to pay only the service charges. This aspect of the matter has not been looked into by the respondents nor have they passed the impugned order in accordance with law. Further, he vehemently submitted that, Regulation 9.05 is not at all applicable to the facts of the case on hand for the reason that, he has filed the application for sanction of additional load in the year 1995, connected the additional load during 1997 and the demand notice for back-billing charges against the petitioner was issued in the year 1998 and even in the said demand notice, there is no mention or reference that, petitioner was liable to pay the augmentation charges. Therefore, the respondents cannot claim the augmentation charges on the basis that, it is an escaped liability, since the installation of the petitioner premises was inspected on 4th March 1998 and even in the demand of back billing charges raised against the petitioner, there was no reference regarding liability of augmentation charges. Further, he submitted that, at any stretch of imagination, it cannot be construed that, the amended Regulations is applicable to the case of the petitioner. Therefore the demand of augmentation charges made against the petitioner is illegal and the same is liable to be quashed.

5. Per contra, learned Counsel appearing for respondents has filed the detailed statement of objections and contended that, the impugned order passed by the third respondent is in strict compliance of the existing Regulations. He submitted that, all the aspects of the matter have been looked into and considered and only thereafter, in obedience of the direction issued by this Court, the impugned order has been passed by furnishing all the details. Further, learned Counsel for respondents submitted that, the petitioner has not approached this Court with clean hands nor stated true facts before this Court. As a matter of fact, petitioner applied for sanction of additional load on 14th September 1995 and thereafter, Vigilance Squad inspected the spot and found that, there was theft of electrical energy and therefore, the installation of the petitioner was back-billed and the petitioner has not paid the said amount. Therefore, since the petitioner failed to pay the back billing charges, there was delay in processing the application for additional power supply. In pursuance of the direction issued by the Trial Court by its order in M.A.No. 18/1997, additional power supply was sanctioned on 17th March 1997 and the service was effected on 21st March 1997. The competent authority has passed the order exercising powers under Regulation 9 for granting additional power supply. Therefore, the petitioner is liable to pay the augmentation charges as per the amended provisions of the Regulations which came into effect from 6th October 1995. The notification dated 4th November 1998 amending the Regulations have subsequently come into force from 5th November 1998 and the said amended Regulation relied upon by the petitioner is not at all applicable since the application filed by the petitioner is dated 14th September 1995 and the power supply has been sanctioned and serviced during 1997 and therefore, the then existing Regulation is applicable and on the basis of

said then existing Regulations, the respondents have issued the impugned order, claiming augmentation charges and the same is in strict compliance of the then existing Regulations. Therefore he submitted that, there is no error or illegality as such committed by the respondents in issuing the impugned order by relying upon Regulation 9.05 Note (b) nor petitioner has made out any good grounds to entertain the instant writ petition.

6. I have heard learned Counsel appearing for petitioner and learned Counsel appearing for respondents for considerable length of time. After careful evaluation of the entire material available on file, including the impugned order passed by the third respondent vide Annexure G, it emerges that, in pursuance of the direction issued by this Court dated 23rd July 1997 in Writ Petition No. 10717/2000, the third respondent has considered the objections filed by the petitioner on 5th August 1999 and has specifically pointed out in the final order that, as per the amendment to Regulation 9 of ESR vide Board communication dated 18th January 1996 bearing No. KEB/B11/B10/6948/90-91 "in cases of extending additional power supply to old buildings which are having power supply prior to 6th October 1995 the augmentation charges at the rate of Rs. 2,500/- per KW is to be collected as envisaged under Regulation 9.05 Note (b) of the said Regulations. From a reading of the same, it is crystal clear that, the same was in force even at the time of sanctioning the additional power supply of 45 KW on 21st March 1997 to the installation of the petitioner. From the order passed by the respondents at Annexure G, it can be seen that, the respondents have observed that, "as per the supply Regulation, ESR 9 is applicable to "Applicable to commercial complex(es) or residential complex(es)/Apartments requiring specified load of 25 KW/10 or more connections in one premises or multi-storied building(s) having 4 or more floor including cellar floor" and since the specified load of the petitioner's building exceed 25 KW, Regulation 9 of ESR was applied and not as multi-storied building, as stated in the objections filed by petitioner. Therefore, the respondents have directed the petitioner to pay a sum of Rs. 2,500/- per KW and for the additional load of 45 KW which was sanctioned on 17th March 1997, the total amount comes to Rs. 2,500/-x45 KW = Rs. 1,12,500/-. It is the stand of respondents that, the said augmentation charges was not collected from the petitioner at the time of sanctioning additional power supply and they came to know of the same only when the Vigilance Squad made the inspection on 27th January 1999 and intimated to collect the augmentation charges as per the then prevailing Regulations. Therefore, they opined that, the claims made towards augmentation charges is quite legal and the same is in accordance with the then prevailing Rules of the day and has got all the legal sanctions since the same is made in accordance with the Indian Electricity supply Act, 1948. The said reasoning given by the third respondents is not in dispute and it has been specifically referred in pursuance of the Regulations. I have gone through the said Regulation, which is made available by the learned Counsel appearing for respondents, it is manifest on the same that, as on the date of the then existing Regulations, the respondents had in fact, got the power. But, the

third respondent has not conducted proper enquiry and not afforded sufficient opportunity to the petitioner to have his say in the matter for the reason that, the respondents have not made available the copy of the Board letter dated 18th January 1996, under which a decision is taken to charge augmentation charges at Rs. 2,500/- in respect of old buildings having power supply prior to 6th October 1995. Behind the back of the petitioner and without intimating regarding the aforesaid communication of the Board, only on the basis of the Board communication dated 18th January 1996, the respondents have taken a decision, which has serious consequence on the financial position of the petitioner. There was virtually no opportunity afforded to the petitioner to have his say in the matter before bringing in the said amendment at Regulation 9.05 Note (b). Therefore, I am of the considered view that, the third respondent being the quasi judicial authority is duty bound to give reasonable opportunity to the petitioner before passing the order on the basis of board letter as referred above. if the authority had done so, the petitioner might have filed his objections and thereafter, the authority could have passed the orders by considering the objections one way or the other. Apparently, in the instant case, such an opportunity has not been given to the petitioner Therefore, the impugned order passed by the third respondent cannot be sustained and it requires reconsideration by the competent authority and to take appropriate decision.

7. Having regard to the facts and circumstances of the case, as stated above, and taking into consideration the totality of the case on hand, the writ petition filed by petitioner is allowed with a direction to the respondents to reconsider the matter afresh and to take appropriate decision after affording reasonable opportunity of hearing to the petitioner and to supply a copy of the board letter dated 18th January 1996 bearing No. KEB/B11/B10/6948/90-91 as per the amended Regulation 9.06 Note (b) of ESR and proceed in accordance with law, and dispose of the same, as expeditiously as possible at any rate within twelve weeks from the date of receipt of a copy of this order.

8. With these observations, the writ petition filed by petitioner stands disposed of.