
(2015) 03 KAR CK 0362

In the Karnataka High Court

Case No : Writ Petition No. 891 of 2008 (GM-KEB)

Gulbarga Electricity Supply Company Limited

APPELLANT

Vs

Narasappa and Others

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Electricity Act, 2003 — Section 126, 135, 136, 137, 138

Citation : (2015) 3 KarLJ 59 : (2015) 4 KCCR 3407

Hon'ble Judges : Ravi V. Malimath, J

Bench : Single Bench

Advocate : R.S. Patil, for the Appellant; Sriyuths R.D. Sagar, MCR Associates, M.C. Ramachandra, Lokesh, N.S. Sandeep and Mallikarjun, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ravi V. Malimath, J.

1. The vigilance squad made a surprise inspection of the respondent 1 who was running a flour mill. It was found that he had committed theft of electricity. Electricity was disconnected and a criminal case was lodged against him. A back billing amount of Rs. 33,659/- along with compounding charges of Rs. 44,000/- was raised on him. He filed an appeal before the Appellate Authority under Section 44.01 of the Karnataka Electricity Regulatory Commission (Electricity Supply and Distribution) Code, 2000-2001. The appeal was dismissed by confirming the Back billing. In the meanwhile, a complaint lodged against the petitioner for theft of electricity ended in acquittal by the Criminal Court. The consumer by invoking the provisions of Regulation 6 of the Karnataka Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 (hereinafter referred to as "2004 Regulations"), sought for a direction for compensation of Rs. 4 lakhs for alleged loss suffered by him and for refund of Rs. 10,750/-, remitted by him at the time of filing the appeal, being 50% of the back billing charges.

2. An interim order was passed directing the petitioner to restore the power supply to the flour mill on the respondent depositing a sum of Rs. 17,366/-. Thereafter by the impugned order, the redressal Forum directed the petitioner to refund 50% of the back billing charges of Rs. 10,753/- to the respondent, which was remitted by him at the time of filing of the appeal: That it was open to the petitioner to adjust the said amount along with interest at 6% per annum from the date of remittance, towards monthly bills and that the respondent is not liable to remit the remaining back billing charges of Rs. 10,750/- and other dues. Aggrieved by the same, the present petition is filed.

3. The learned Counsel for the petitioner contends that the impugned order is erroneous and liable to be set aside. That the Forum did not have any jurisdiction to entertain the complaint. That even though the appeal filed in the Criminal Court ended in acquittal, the same would not entitle any relief to the respondent. That aggrieved by the back billing charges, he has filed an appeal before the Appellate Authority. The Appellate Authority has dismissed the appeal. The said order has become final and no further proceedings are initiated thereafter by the respondent.

4. In terms of 2004 Regulations, "complaint" is defined under Regulation 2(g) as follows:

"2. (g) "Complaint" means any grievance made by a consumer with regard to supply of electricity by the licensee, provided that grievance falling within the purview of any of the following provisions of the Act are excluded from the jurisdiction of the Forum:

- (1) unauthorised use of electricity as provided under Section 126 of the Act;
 - (2) offences and penalties as provided under Sections 135 to 139 of the Act;
 - (3) accident in the distribution, supply or use of electricity as provided under Section 161 of the Act; and
- ..."

5. In terms of Regulation 2(g)(1) of 2004 Regulations, no grievance could be entertained by the Forum which pertains to unauthorised use of electricity as provided under Section 126 of the Electricity Act, 2003, Admittedly, this is a case of unauthorised use of electricity. It is undisputed that the case made out by the respondent is one of theft of electricity. Therefore, the same stands excluded in terms of Regulation 2(g)(1) of the 2004 Regulations. The Forum overruled the said objection on the ground that respondent 1 has been acquitted by the Criminal Court. That such an acquittal has not been challenged by the petitioner. That what is ousted is only the jurisdiction of the Civil Court. The Forum is not a Civil Court. Therefore, the Forum has jurisdiction to entertain the appeal.

6. Heard learned Counsel appearing for petitioner and perused the material on record. The Counsel for the respondents 1 and 2 are absent.

7. On considering the contention of the learned Counsel and on perusal of the impugned order, I am of the considered view that appropriate relief requires to be granted. The interpretation sought to be made by the Forum runs contrary to the 2004 Regulations. There is no distinction as to whether the respondent was acquitted or not. The fact remains that the appeal filed by him against the back billing was dismissed. The jurisdiction of the Forum stands excluded in terms of Regulation 2(g)(1) of the 2004 Regulations so far as theft of electricity is concerned. Therefore, whenever there is a case of unauthorised use of electricity, the Forum would not have any jurisdiction in the matter at all. The reasoning assigned by the Forum is inappropriate and is not in conformity with the 2004 Regulations. The Forum has no jurisdiction to entertain the matter at all. The impugned order suffers from an inherent lack of jurisdiction. Consequently,, the petition is allowed. The order dated 23-7-2007, passed in Complaint No. 11 of 2007 by the Consumer Grievances Redressal Forum, GESCOM, Gulbarga, is quashed.

Rule made absolute.