

(2004) 03 KAR CK 0080
In the Karnataka High Court
Case No : Writ Appeal No. 5965 of 1999

Karnataka Electricity Board and Another	APPELLANT
Vs	
Nithen Kumar Sheth	RESPONDENT

Date of Decision : 15-03-2004

Acts Referred:

Electricity (Supply) Act, 1948 — Section 49, 79 J
Karnataka Electricity Board Electricity Supply Regulations, 1988 — Regulation 9

Citation : (2004) 4 KarLJ 216 : (2004) 3 KCCR 238 SN

Hon'ble Judges : Tirath S. Thakur, J;Huluvadi G. Ramesh, J

Bench : Division Bench

Advocate : N. Krishnananda Gupta, for the Appellant; Pramod N. Kathavi, for the Respondent

Final Decision : Allowed

Judgement

Tirath S. Thakur, J.—This appeal arises out of an order dated 26-7-1999 passed by a learned Single Judge of this Court whereby Writ Petition No. 19379 of 1996 filed by the petitioner-respondent herein was allowed and the demand raised by the appellant-Board for payment of service charge of Rs. 7,500/- per Kilo Watt reduced to Rs. 2,500/- per Kilo Watt.

2. The respondent appears to have purchased property bearing No. 14, 11th cross Nehrunagar, Bangalore, and after demolishing the existing structure built a multi-storied residential complex in the same. A request was then made to the appellant-Karnataka Electricity Board for supply of electric power. Different applications in that regard appear to have been made from time to time in which the estimated load for the building varied between 47 Kilo Watts and 20.20 Kilo Watts. In response to the said requests the Board issued an endorsement dated 19th of June, 1996 informing the respondent that the "Specified Load" for the building in question was 27 Kilo Watts and that the respondent was apart from complying with the other formalities required to deposit augmentation charges amounting to Rs. 2,02,500/- at Rs. 7,500/- per Kilo Watt of Specified Load. The

sanction of the power in favour of the respondent was subject to the completion of the formalities stipulated including the deposit of the augmentation charges. Aggrieved by the said demand, the petitioner filed Writ Petition No. 19379 of 1996 for a writ of certiorari quashing the demand as also a mandamus directing the Board to sanction the supply demanded by the respondent. The petitioner's case in the writ petition was that Regulation 9 upon which the Board placed reliance did not sanction recovery of augmentation charges at Rs. 7,500/- per Kilo Watt. The Board could according to the petitioner at best claim augmentation charges only at Rs. 2,500/- per Kilo Watt. The insistence on the part of the Board for deposit of a higher amount was in that view unjustified, argued the petitioner.

3. In the statement of objections filed on behalf of the Board, the demand made by it was justified inter alia on the ground that the Board had stipulated augmentation charges of Rs. 7,500/- per Kilo Watt for all such new connections made to multi-storied buildings as had a specified load of more than 25 Kilo Watts like the petitioner. It was also stated that the Circular issued by the Board had the force of law and that in cases where the prospective consumers were not able to provide for space and infrastructure for the placement of a transformer the deposit of augmentation charges at the rate stipulated in the Circular was the only alternative.

4. H.L. Dattu, J., before whom the writ petition was argued, recorded a three-fold finding while allowing the petition and reducing the service charge to Rs. 2,500/- per Kilo Watt from Rs. 7,500/- per Kilo Watt demanded by the Board. Upon consideration of the provision of Regulation 9 of the Karnataka Electricity Board Electricity Supply Regulations, 1988, the learned Single Judge came to the conclusion that Regulation 9.03 referred to specified load which in turn meant load as assessed by the Sub-Divisional Officer under Regulation 9.02 of the Regulations or the load applied for whichever was higher. The Sub-Divisional Officer/Local Officer of the Board had it was found assessed the requirement of the load for the building constructed by the respondent at 27 Kilo Watts which was the specified load for all purposes under the Regulations. The learned Single Judge also was of the view that Regulation 9.05(2)(e) read with Note (b) thereof permitted collection of augmentation charges only at Rs. 2,500/- per Kilo Watt. The demand of such charges at a rate higher than what was stipulated under the Regulations was according to the learned Single Judge legally unsustainable. The third and the only other finding which the learned Single Judge recorded on the merits of the controversy was that Circular dated 12th of April, 1996 issued by the Electricity Board was of no assistance to the Board as the same had been issued for a different purpose and for different types of building altogether. The writ petition was on those findings allowed in part and to the extent that the demand raised by the Board was reduced from Rs. 7500A per Kilo Watt to Rs. 2,500/- per Kilo Watt for the specified load of 27 Kilo Watts. The present appeal filed by the Board assails the correctness of the said finding.

5. We have heard Mr. N.K. Gupta, learned Counsel appearing for the appellants

and Mr. Kathavi, learned Counsel for the respondent. We have also been taken through the record including the Circular issued by the Board and the order passed by the learned Single Judge. The short question that falls for consideration before us is whether the demand raised by the appellant-Board towards augmentation charges is legally sustainable having regard to the Karnataka Electricity Board Electricity Supply Regulations, 1988, in force at the relevant point of time and the Circular issued by the Board in terms of Section 49 of the Electricity (Supply) Act. In fairness to Mr. Kathavi, learned Counsel for the respondent we must say that the finding recorded by the learned Single Judge that the specified load referred to in Regulations was 27 Kilo Watts as assessed by the Sub-Divisional Officer/Local Officer of the Board and that any demand for payment of augmentation charges must relate to the said load has not been assailed before us. We have therefore no difficulty in affirming the said finding and holding that the specified load for purposes of the Regulations as assessed under the same was and continues to be 27 Kilo Watts and not 20.20 Kilo Watts originally applied for by the owner respondent herein. That being the position the only other aspect that would call for an answer is whether the Board was justified in raising a demand at Rs. 7,500/- per Kilo Watt for the entire specified load towards augmentation charges. An answer to that question will necessarily depend upon the provisions of Regulation 9 of the Regulations mentioned earlier. Regulation 9 makes it clear that the same is applicable to commercial complexes or residential complexes/apartments requiring specified load of 25 Kilo Watts/10 or more connections in one premises or multi-storied building/s having four or more floors including cellar floor. It is not in dispute that the said regulation would squarely apply to the building constructed by the respondent in the instant case for more than one reasons. Firstly, because the specified load assessed under the Regulations as noticed earlier is 27 Kilo Watts and secondly, because the building itself is a multi-storied building having more than four floors.

6. Regulation 9.01 stipulates the procedure for making the applications for grant of supply, while Regulation 9.02 indicates the procedure to be followed on receipt of such applications. Regulation 9.03 defines and regulates the assessment of specified load of the premises for the purposes of the Regulations.

7. Regulation 9.04 inter alia, provides that in cases where specified load is 25 Kilo Watts and above but not more than 75 Kilo Watts supplies will be subject to compliance of provisions made in the said Regulation. The provision envisages work to be carried out by the applicant/promoter for laying a suitable HT/LT Cable, erection of transformer, switch gear including service cables from the nearest distribution main or transformer erected in the premises of the applicant as the case may be upto the metering point. A careful reading of Regulation 9.04(3)(a) to (o) would show that the same envisage and cater to situations in which the applicant can provide space in his premises for the installation of a transformer, switch gear and other allied equipment. In cases where the space required for installation of the transformer, switch gear and other allied equipments is not available, the process of augmentation shall have to be

necessarily carried out away from the premises for which such augmentation is necessary. That appears to be the position in the instant case also for it is not the case of the respondent-owner that he is in a position to provide space for the installation of the transformer, switch gear or other allied equipments and to carry out the necessary works for the installation of the said equipment in which event the Board would be entitled to payment of supervision charges of 25% only on the estimated cost to be incurred on such augmentation.

8. Regulation 9.05 envisages payment of service charges which is synonymous to augmentation charges at Rs. 2,500/- per Kilo Watt or part thereof in cases where the specified load is in excess of 75 Kilo Watts. Regulation 9.05(1) deals with supply of additional power for residential or commercial complexes already having LT power supply. We are not in the instant case dealing with a situation where the applicant has asked for additional power supply for a complex already serviced by LT power supply nor is it a case where the additional load is required because of additions made to the building or because of any other reason justifying a requisition for such additional load. Notes (a) and (b) of Regulation 9.05 upon which the learned Single Judge appears to have placed reliance strictly speaking do not have any application as the said notes are extensions or explanations to Regulation 9.05 only which in turn applies in cases where the additional power supply has to be sanctioned for a premises which already has the benefit of LT power supply to it.

9. Regulations 9.06 to 9.14 appearing in the Regulations do not have any application or relevance to the question whether and if so what is the rate at which the Board could ask for augmentation charges. Suffice it to say that Regulation 9 does not make any provision for payment of augmentation charges in cases where the specified load is between 25 Kilo Watts and 75 Kilo Watts. In cases where the specified load is more than 75 Kilo Watts the provisions of Regulation 9.05 stipulate service charges of Rs. 2,500/-. In case of premises for which the specified load is less than 25 Kilo Watts, Regulation 9 has no application whatsoever. It was this lacuna in the Regulations, which left a grey area for the Board to cover by issuing a suitable Circular. The Board's Circular dated 12th of April, 1996 clarified and accorded approval to levy augmentation charges at Rs. 7,500/- per Kilo Watt in four different situations referred to in para 4 of the said Circular, which reads as under:

"4. In cases of applicants availing fresh power supply to the new buildings where specified load is between 25 Kilo Watts and 50 Kilo Watts and if there is no space to install distribution transformer in the consumers premises, the jurisdictional Superintending Engineer Electrical, may approve to arrange power supply as follows:-

(i) From the existing Board's distribution transformer nearby if it has capacity to cater to the additional load subject to condition that the total load on the distribution transformer does not exceed 75% of rated capacity duly taking into consideration the other fresh/additional loads that have been already sanctioned,

but not yet serviced.

(ii) By augmenting the capacity of the nearby distribution transformer subject to the condition that the total load on distribution transformer does not exceed 75% of the rated capacity duly taking into consideration the other fresh/additional loads that are already sanctioned, but not yet serviced.

(iii) By putting up a new transformer at Board's cost in the nearby public space/foot path, if space is available.

(iv) Board may arrange power supply to the prospective buildings from nearby transformers in a private premises which has got adequate capacity or will have capacity on enhancement, provided that the prospective consumer produces an unambiguous permission letter from the owner of the premises where transformer is located subject to the condition that the load on the enhanced distribution transformer does not exceed 75% of rated capacity duly taking into consideration the other fresh/additional loads sanctioned on the transformer by the Board.

In all the above four cases, a service charge at the rate of Rs. 7,500/- per Kilo Watt in Bangalore and Rs. 5,000/- per Kilo Watt in other cities/towns for the entire specified load shall be collected from the prospective consumer. Under any circumstances, the capacity of the distribution transformer should not be more than 500 KVA".

A plain reading of the above would show that Circular makes a specific provision for supply of power to new buildings where the specified load is between 25 Kilo Watts and 50 Kilo Watts as is the position in the instant case. It is also evident that the Circular applies only to cases where there is no space to install Distribution Transformer in the consumer premises as admittedly is the position in the instant case also. There is in that view no real conflict between the provisions made in the Regulations and that made by the Board in the Circular in question. That the Circular is within the competence of the Board is also evident from the provisions of Section 49 of the Electricity (Supply) Act which empowers the Board inter alia, to stipulate the terms and conditions of supply. Interpreting Section 49 of the Act, the Supreme Court has in *Hyderabad Engineering Industries Ltd. and Others Vs. A.P. State Electricity Board and Others*, held that the Board could lay down conditions of supply and for purposes of such supply, it may also frame uniform tariffs. This position was reiterated in *The Adoni Cotton Mills Ltd. and Others Vs. The Andhra Pradesh State Electricity Board and Others*, where their Lordships declared that the power u/s 49 could be exercised without making any Regulation as contemplated u/s 79-J of the Electricity (Supply) Act. In *Ferro Alloys Corpn. Ltd. Vs. A.P. State Electricity Board* and another, the Court held that Section 49 vested the Board with two powers (i) to prescribe terms and conditions of supply; and (ii) to fix the tariff Reference may also be made to *M/s. Hyderabad Vanaspathi Limited Vs. Andhra Pradesh State Electricity Board and Others*, where their Lordships observed:

"Section 49 empowers the Board to supply electricity on "such terms and conditions as it thinks fit". It may also frame uniform tariffs. We have found that the terms and conditions of supply are statutory in character. They can be invalidated only if they are in conflict with any provision of the Act or the Constitution. Learned Counsel have not shown to us any provision in the Supply Act with which clause 39 is in conflict. Insofar as the Supply Act is concerned, the argument hovers around Section 49 only. The only limitation in that section is that the terms and conditions of supply should be subject to the provisions of the Act".

In Venkatagiriappa Vs. Karnataka Electricity Board, Bangalore and Others, Writ Petition No. 124 of 1998 and connected matters decided on 15-7-1998, a Division Bench of this Court was examining whether the Board had the power u/s 49 of the Electricity (Supply) Act to regulate supply of energy by issuing a Circular. Answering the question in the affirmative, this Court held that in the absence of any specific regulation covering the subject on which the Circular is issued, the Board could invoke its powers u/s 49 to make a suitable provision which would then be effective as law subject only to the provisions of the Act.

10. In the light of the above authoritative pronouncements we have no manner of doubt that the Circular issued by the Board in the instant case was within its competence and since the said Circular was not in any way contrary to the Statutory Regulations or the provisions of the Act, the same was effective and could have been enforced as a condition precedent for the supply of energy to the petitioner-respondent herein. We are also of the view that Circular in question squarely covered the situation at hand for it applied to supply of energy to new buildings in which the specified load was between 25 Kilo Watts and 50 Kilo Watts and in cases where no space was available for the installation of a transformer in the same premises. The learned Single Judge was in our opinion in error in holding that the Circular was issued for a different purpose or was applicable to different kind of buildings. In that view therefore the demand made by the Board for payment of augmentation charges/service charges at Rs. 7,500/- per Kilo Watt could not be said to unjustified or unsustainable.

11. This writ appeal accordingly succeeds and is hereby allowed. The order passed by the learned Single Judge is set aside and the writ petition dismissed but in the circumstances without any order as to costs.