

(2000) 03 KAR CK 0053
In the Karnataka High Court
Case No : Writ Appeal No. 5922 fo 1999

K.L. Ramnath Bhat

APPELLANT

Vs

Karnataka Power Transmission Corporation (KPTC) and others

RESPONDENT

Date of Decision : 20-03-2000

Acts Referred:

Karnataka Electricity Board Electricity Supply Regulations, 1988 — Regulation 2.33, 44.07

Citation : (2000) ILR (Kar) 2334 : (2001) 2 KarLJ 182 : (2000) 3 KCCR 2113

Hon'ble Judges : Y. Bhaskar Rao, C.J;V. Gopala Gowda, J

Bench : Division Bench

Advocate : Sri M.S. Purshottama Rao, for the Appellant; Sri N.K. Gupta, for the Respondent

Judgement

V. Gopala Gowda, J.—The matter pertains to unauthorised drawing of electricity. Mahazar was drawn and tampering of meter was noticed. A back-bill was issued to the appellant for a sum of Rs. 1,19,893/-. 50% of the said amount was paid by the petitioner. However, appeal was filed against the back-billing. In the appeal the demand was confirmed. The second appeal preferred against the said order also came to be dismissed. The writ petition filed by the appellant questioning the aforesaid orders was dismissed by the learned Single Judge by his order dated 2-7-1999. This appeal is filed challenging the said order of the learned Single Judge.

2. The contention put forth before the learned Single Judge that the officer who lodged the complaint had no competency, has been rightly negated by the learned Single Judge placing reliance on Regulation 2.33 of Karnataka Electricity Board Electricity Supply Regulations, 1988 (hereinafter referred to as the Regulations"). It was held that the contention raised by the appellant was based on old regulation, which was no more in existence consequent upon the amendment brought with effect from 16-1-1992.

3. The second contention raised by the appellant is that Second Appellate

Authority was the Chief Engineer but in the instant case the Board has exercised the power and the same is illegal and without jurisdiction. The learned Single Judge referred to the Notification dated 24-12-1997 of the Board and held that if the First Appellate Authority is the Chief Engineer, the Second Appellate Authority is the Board. In the present case, the First Appellate Authority was the Chief Engineer. Therefore, the learned Single Judge was justified in holding that the Chief Engineer himself cannot entertain an appeal against his own decision. It is well-established that an authority cannot and shall not sit over in appeal against his own decision. Consequently, the contention was rightly rejected by the learned Single Judge.

4. The third contention raised was, neither the complainant nor the investigating officers was before the First Appellate Authority. In other words, the contention is that they are not examined to prove the allegation. The learned Single Judge rejected the contention placing reliance on Regulation 4-26-03 which should have been Regulation 26.07 of the Regulations which stipulates that the consumer shall ensure that the meter is not damaged or tampered with. In the instant case it was found that the meter was tampered. The learned Single Judge has rightly held that it was for the appellant to prove that the meter was not tampered with.

5. Appellant has relied upon the judgment dated 8-9-1995 in C.C. No. 626 of 1990 passed by the VIII Additional Chief Metropolitan Magistrate, Bangalore acquitting him for the charge of theft of electricity to contend that he is not guilty. The learned Single Judge considered this contention and held that the acquittal of the appellant was not on merits but by extending the benefit of doubt. Regulation 44.07 of the Regulations is against the appellant. Clause (b) of the said provision states that acquittal of a consumer in any criminal case shall not bar the proceedings, under that provision except on the ground other than that the prosecution case is false. In the said criminal case the Court has not held that the prosecution case is false. Therefore, even though the appellant was not guilty of the charge, when it was found that the meter was tampered with at the time of mahazar, the appellant did not raise any objection to the same. The petitioner also paid 50% of the back-billing charges on 2-11-1989. The learned Single Judge was justified in observing that the proceedings before the authorities were not criminal proceedings. The reliance placed on the decision in *Tulsi Ram Vs. State of U.P.*, was rightly not accepted by the learned Single Judge on the ground that it was rendered in a criminal prosecution and it cannot be applied to the instant case wherein the statutory presumption has been availed of.

6. The learned Single Judge granted liberty to the appellant to submit representation for waiver of interest and to consider the same sympathetically. Only to the extent to which the appellant is entitled for the relief has been granted by the learned Single Judge and we are satisfied that neither the order of the learned Single Judge nor the orders passed by the authorities which were impugned in the writ petition warrant interference.

7. We, therefore, reject the appeal.