

(2005) 02 KAR CK 0007
In the Karnataka High Court
Case No : Writ Petition No. 25343 of 2002

K.R. Revanasiddappa

APPELLANT

Vs

Superintending Engineer, Karnataka Power Transmission
Corporation Limited and Another

RESPONDENT

Date of Decision : 22-02-2005

Acts Referred:

Citation : (2005) 3 KarLJ 583 : (2005) 2 KCCR 766

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

Bench : Single Bench

Advocate : R.B. Sadasivappa, for the Appellant; B.S. Kamate, for Respondents-1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—Though this matter is listed today for orders, with the consent of the learned Counsels appearing for both the parties, the matter is taken up for hearing.

2. The petitioner, questioning the legality and validity of the Final Notice dated 3-10-2001 issued by the 2nd respondent bearing No. EE:HD.TL-SS:BW-RC:QRS. No. 2 (AE/JE): 2932-38 vide Annexure-A and the communication dated 18-3-2002 vide Annexure-C, on the file of the 2nd respondent, has presented this writ petition. Further, the petitioner sought to direct the respondents to refund the penal rent recovered from his salary from March 2002.

3. It is not in dispute that, the petitioner is working as Junior Engineer, O and M, Doddagubbi, KPTCL and he has been allotted the quarters at Banaswadi sub-station. The petitioner was transferred from the said place to another place and in view of his transfer he is supposed to vacate the quarters allotted to him at Banaswadi as early as on 5-6-1997. However, as per the existing Regulations of the KPTCL, the petitioner is entitle to continue in the said quarters for another three months. Further, it reveals that the petitioner has not vacated the

premises. It is the case of the petitioner that, he has not vacated the said premises in view of the request made by him to the 2nd respondent on 1-8-2001. The 2nd respondent herein has forwarded the representation given by the petitioner to the Superintending Engineer, KPTCL, South Circle, Bangalore, in the interest of the Corporation and availability of the official in the headquarters for attending the interruptions and maintenance will be of great help and his presence for staying in Banaswadi quarters upto March 2002 may be considered favourably. No decision has been taken on the said communication sent by the 2nd respondent to the 1st respondent. Thereafter, the 2nd respondent has issued the impugned final notice to the petitioner to vacate the premises on or before 31-10-2001 vide Annexure-A, dated 3-10-2001 by stating that, in the meeting held on 7-9-2001 by the SE(E)BC, South and Chairman, HAC, it has been resolved to recover penal rent from the petitioner as proposed by the EE(E), Hoody Division, in his letter dated 25-2-2001 and also to get the quarters vacated by the official within 31-10-2001 to facilitate allotment of this quarters to the needy employee. Thereafter, recovery communication has been sent to the Executive Engineer (E), KPTCL, Rural North Division by the 2nd respondent vide Annexure-C. Being aggrieved by the impugned final notice vide Annexure-A and the recovery communication vide Annexure-C, as stated supra, the petitioner felt necessitated to present this writ petition.

4. The principal submission canvassed by the learned Counsel for the petitioner" is that, the impugned final notice issued by the 2nd respondent and in pursuance of that sending a communication for recovery of penal rent are not in accordance with law and they are contrary to the mandatory Regulations of the KPTCL. To substantiate his submission, he has taken me through the impugned final notice vide Annexure-A and pointed out that, in Annexure-A it is clearly stated that, if the petitioner fails to vacate the quarters on or before 31-10-2001 the same will be reported to the concerned authority for taking disciplinary action as per the KPTCL Rules to vacate the quarters and also to recover penal rent from his salary. Immediately after the receipt of the said final notice, the petitioner has vacated the premises on 29-10-2001 itself i.e., before the expiry of the time granted by the Competent Authority in the final notice. When he has already vacated the premises, the question of recovery of penal rent does not arise, nor the authority has any power to recover the said amount. Therefore, he has submitted that the impugned final notice and the communication sent for recovery of penal rent are liable to be rejected at threshold.

5. Further, the learned Counsel for the petitioner has taken a specific ground in this writ petition that, the 1st has failed to note that the penal rent is not recovered from other officials who resided in the Government quarters even though they were transferred from the place and therefore, the order of recovery of penal rent from the petitioner is prima facie arbitrary. He has also placed reliance on the judgment of this Court in the case of Shivalingaiah Vs. Superintendent Engineer (Electrical) and Chairman, K.E.B., House Allotment Committee, Bangalore, disposed of by this Court on 23-11-1999 in W.P. No. 4598

of 1998 and submitted that, this Court has held that the Paragraphs 38.01 and 38.02 of the Accounts Manual, Volume I are invalid and in view of that the impugned final notice and the communication are arbitrary and without jurisdiction. Further, he vehemently submitted that the transfer of the petitioner has been made within the distance of less than eight kilometers and he continued to reside in the quarters, in view of the request made by him in his representation dated 1-8-2001 which was forwarded by the 2nd respondent to the 1st respondent with a note to permit the petitioner to continue in the said quarters upto March 2002. But, this aspect of the matter is not at all taken into consideration by the authority before issuing final notice to the petitioner directing him to vacate the premises. As a matter of fact, the respondents continued to deduct the rent from the salary of the petitioner as permissible under the Regulations and at no point of time they insisted for penal rent for continuing in the said quarters from 1997-2001. This aspect of the matter is not at all looked into by the Competent Authority in its meeting held on 7-9-2001. Therefore, he submitted that the impugned final notice and the communication for recovery vide Annexure-A and C are liable to vitiate.

6. Per contra, the learned Standing Counsel appearing for the respondents, inter alia, contended and substantiated the final notice issued and the recovery communication sent by the 2nd respondent. They were issued and sent in strict compliance of the mandatory provisions of the KPTCL Act and the existing Regulations. Further, he submitted so far as specific ground taken by the petitioner regarding the invalidity of the Paragraphs 38.01 and 38.02 of the Karnataka Electricity Board Accounts Manual, Volume I, that, the same has been upheld by the Division Bench of this Court in N.K. Nanjarajaiah and Another Vs. Karnataka Electricity Board and Others, and connected matters disposed of on 20th February, 2003. Therefore, he submitted that the said ground urged by the learned Counsel for the petitioner is liable to be rejected at threshold. Secondly, he submitted that there is no substance or force in the submission made by the learned Counsel for the petitioner that the respondents have not intimated the petitioner to vacate the premises before taking a decision in the year 2001 as mentioned in the final notice. To substantiate his submission he has taken me through para 2 of their statement of objections and submitted that, the communications were sent to the petitioner in writing on 30-8-1997, 8-10-1997, 9-11-1997, 22-1-1998 and 25-7-2001 calling upon the petitioner to vacate the quarters immediately and also notifying him of his liability to pay the penal rent. The copy of the last communication has been produced along with the statement of objection at Annexure-R1. In the last communication dated 25-7-2001, Annexure-R1, it is specifically mentioned about the earlier communications sent to the petitioner in the reference at Sl. Nos. 1 to 5. In spite of that, the petitioner has not vacated the said premises. Then only the matter has been placed before the Competent Authority for taking a decision. The Competent Authority in its meeting held on 7-9-2001 has taken a decision to recover the penal rent from the petitioner from 1997 to 2001 for a period of more than 4 1/2 years. If in

case, petitioner fails to vacate the quarters on or before 31-10-2001 appropriate action will be initiated against him for violation of the KPTCL Rules to vacate the quarters. Therefore, he submitted that the conduct of the petitioner is not fair and this aspect of the matter is intentionally and deliberately suppressed by the petitioner in this writ petition. Therefore, he submitted that the writ petition filed by the petitioner is liable to be dismissed at threshold for suppression of material facts.

7. After having heard the learned Counsel for the petitioner, the learned Standing Counsel for respondents and after careful perusal of the materials available on record and the rival contentions urged by both the Counsels, the only question that arises for consideration in this writ petition is:

Whether the impugned final notice issued to the petitioner vide Annexure-A by the 2nd respondent and the recovery communication sent from one office to another office of KPTCL vide Annexure-C, for recovery of penal rent from the petitioner are in accordance with law?

8. After careful perusal of the impugned final notice issued by the 2nd respondent vide Annexure-A and the internal correspondence between one office to another office vide Annexure-C to take immediate action and to recover the penal rent from the petitioner, I do not find any error of law, illegality, much less material irregularity committed by the 2nd respondent in issuing the said final notice and the communication. It is not in dispute that the petitioner has been transferred as early as in the year 1997 and he is supposed to vacate the quarters allotted to him as early as in the year May 1991 and as per the existing Regulations he is entitled to continue in the said quarters upto 3-9-1997. Thereafter, several communication have been sent to the petitioner to vacate the premises to enable them to allot the same to the needy employee of the respondents. In spite of that, the petitioner has failed to vacate the same and continued therein for more than 4 1/2 years. When the matter has been placed before the Competent Authority to take appropriate decision, the Competent Authority in its meeting held on 7-9-2001 has taken a decision to recover the penal rent from the petitioner as per the communication sent by the Executive Engineer (E), Hoody Division, dated 25-2-2001 and the existing Regulations of the KPTCL Rules. Thereafter, the petitioner has been directed to vacate the premises on or before 31-10-2001 failing which appropriate action will be initiated against him as per the existing Rules to vacate the quarters. But, it is significant to note that, the learned Senior Counsel has placed heavy reliance on the representation/communication/recommendations vide Annexure-B, dated 1-8-2001. The petitioner for the first time has given his representation on 1-8-2001 to the Superintending Engineer-1st respondent through proper channel-the 2nd respondent herein, who in turn has forwarded the said representation with recommendations requesting the Competent Authority to permit the petitioner to stay in the designated quarters upto March 2002. But he has not produced any request made taken between 1997 to 1-8-2001. Therefore, the

said reliance placed by the learned Counsel for the petitioner cannot be appreciated, nor there is any substance.

9. So far as the specify submission made by the learned Counsel for the petitioner that, as per the final notice, the petitioner has been directed to vacate the premises on or before 31-10-2001. The petitioner has vacated the premises well in advance i.e., on 29-10-2001 much prior to 31-10-2001. Therefore, the question of recovering the penal rent from the petitioner is not justifiable. The said submission made by the learned Counsel for the petitioner cannot be accepted for more than one reason. Firstly, in view of failure of the petitioner in vacating the premises. Secondly, several communication has been sent to the petitioner as referred above to vacate the premises, but in spite of that, he has failed to vacate the premises. Thereafter, the matter has been placed before the Competent Authority to take a decision. The Competent Authority has taken a decision in its meeting held on 7-9-2001 to recover the penal rent from the petitioner and if in case petitioner fails to vacate the premises on or before 31-10-2001, appropriate action will be initiated against him to vacate the quarters and also to recover penal rent as per the KPTCL Rules and communicated the same to the petitioner. The petitioner instead of filing his reply to the final notice, has approached this Court by way of filing this writ petition. The decision taken by the Competent Authority is in strict compliance of the mandatory Regulations of the KPTCL and also having regard to the conduct of the petitioner and other factors as stated supra. The decision taken by the respondents is just and reasonable. Therefore, I do not find any error or material irregularity committed by the 2nd respondent in issuing the impugned final notice vide Annexure-A and sending a communication vide Annexure-C to the concerned officer of recovery of penal rent from the petitioner. Nor the petitioner has made out any good grounds to entertain this writ petition. Hence, the writ petition filed by the petitioner is liable to be rejected.

10. For yet another reason the writ petition filed by the petitioner is liable to be dismissed to threshold is on the ground that, the petitioner being well-qualified employee of the respondent, being the Junior Engineer has come up before this Court by suppressing the materials facts. As a matter of fact, but not once, for more than six times the respondents have sent notice to the petitioner from 30-8-1997, 8-10-1997, 9-11-1997, 22-1-1998 and 25-7-2001. The copy of the notice dated 25-7-2001 is produced by the respondents along with their statement of objection. In Annexure-R1, the earlier communications sent to the petitioner have been referred at Sl. Nos. 1 to 5. Therefore, the submission made by the learned Counsel for the petitioner that the said fact has been brought out for the first time before this Court and therefore he wants to take instruction and make his submission as to whether these transactions have been served to the petitioner or not cannot be accepted for the reason that the statement of objection has been filed by the respondents as early as on 11th November, 2002 duly served on the Counsel appearing for the petitioner. When he is aware about this fact as early as in the year 2002, the question of considering the request of

the learned Counsel for the petitioner, that too after spending more than one hour and after hearing both the Counsels at considerable length of time, does not arise. Therefore, having regard to the facts and circumstances of the case and in view of the suppression of material facts as stated supra, the writ petition filed by the petitioner is liable to be rejected on this ground also, at the cost of Rs. 1,500/- to be payable by the petitioner to the respondents within two weeks from the date of receipt of the copy of this order. If in case, the petitioner fails to pay the cost of Rs. 1,500/- to the respondents within the prescribed time, it is open for the respondents to initiate appropriate proceedings to recover the said amount from his salary.

11. For the foregoing reasons, the writ petition filed by the petitioner is dismissed with costs.

12. After dictating this order, the learned Counsel appearing for the petitioner has submitted that, in view of the observations made by the Division Bench of this Court in N.K. Nanjarajaiah's case and connected matters, disposed of on 20th February, 2003, the petitioner may be permitted to give a representation for reducing the penal rent and the respondents may be directed to consider his representation. Therefore, it is needless to clarify that, it is open for the petitioner to take advantage of the observations made by the Division Bench of this Court as stated supra, by way of giving representation to the Competent Authority. If in case, the petitioner gives a representation to the Competent Authority, the Competent Authority is hereby directed to consider the same bearing in mind the decision passed by the Division Bench of this Court in N.K. Nanjarajaiah's case and connected matters, disposed of on 20th February, 2003.