(2003) 01 KAR CK 0041

In the Karnataka High Court

Case No : Writ Petition No. 44371 of 2002

Mahaveer Distributors APPELLANT

Vs

Bangalore Electric Supply Company Limited (BESCOM) and Others RESPONDENT

Date of Decision : 20-01-2003

Acts Referred:

Karnataka Electricity Regulatory Commission (Electricity Supply and Distribution) Code, 2001 — Section 214

Citation : AIR 2004 Kar 205 : (2003) ILR (Kar) 2210 : (2003) 4 KarLJ 430 : (2003) 3 KCCR 1734 : (2005) 2 RCR(Civil) 298

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : B.K. Sampath Kumar and Associates, for the Appellant; Srinivas Rao, for the Respondent

Final Decision : Dismissed

Judgement

Kumar, J.—The petitioner is a registered partnership firm and have taken the premises bearing No. 3, MN Krishna Rao Road, Opposite Cauvery Petrol Bunk, Near Lalbagh West Gate, Bangalore - 560004, on lease on 14.8.1998 on a monthly rent of Rs. 21,000/- as per Annexure-B. The petitioner had filed a suit in O.S. No. 4651/2001 for an injunction against the owner of the aforesaid premises, which clearly shows that the relation between the petitioner and the owner of the premises is strained. The Police complaints have also been filed between the parties.

2. The petitioner, by a letter dated 30/08/2002 sought for 53 KW.L.T. power supply to the leased premises as per Annexure-F. Thereafter, a formal application was also filed in the prescribed form on 3.9.2002 as per Annexure -G1 and the receipt is at Annexure-G2. The respondent refused the grant of power supply. The first ground given by the respondent for refusal to grant power supply is, as the leased premises already have power supply, the request of the petitioner can

only be considered as a request for additional power supply, and therefore, such an application for additional supply is to be made by the person who has obtained the connection, namely, the consumer- owner. The second reason given was, if the existing installation is transferred in the name of the petitioner - lessee, a consent letter to that effect from the owner is a must. In the absence of these things, the respondent pleaded their inability to accede to the request of the petitioner for grant of 53 KW. L.T. power supply to the leased premises. Therefore, the petitioner has challenged the said refusal by the respondents to grant him the power supply by filing this Writ Petition.

3. The respondents have filed their counter. The respondents submits that the leased premises has power supply connection in the name of Sri Yousuf for all the five floors, including the portion for which the petitioner had made application. Therefore, the petitioner was informed of the legal requirements before his request could be granted as per Annexure -A endorsement dated 30.11.2002 and they have set out in detail how the petitioner is not entitled to the reliefs sought for. They also contended that the owner of the premises is not impleaded as respondent, and therefore, the petition is liable to be dismissed for non-joinder of necessary party. Therefore, they have prayed for dismissal of the Writ Petition.

4. Learned Counsel appearing for petitioner, Sri B.K. Sampath Kumar, submit that in the entire scheme of regulations there is no prohibition for granting of an independent electricity installation at the instance of an occupier, even though such premises has another installation. Therefore, in the absence of any such prohibition, when the petitioner - lessee makes an application for electricity installation, the authorities are bound to grant such installation. The learned Counsel relies on a judgment of the Supreme Court in the case of Harbhajan Singh Vs. Press Council of India and Others, to substantiate his contention that where right to be appointed is conferred by the statute, any ineligibility entailing a bar on being appointed should be clearly provided. In the absence of which such bar cannot be read into the provision on the basis of assumed intention and, therefore, he contends, in the absence of any specific provision in the Code prohibiting making of an application by a tenant for an independent electrical installation when the lease in his favour is not in dispute, the tenant is entitled to an independent electricity installation notwithstanding the fact that the said premises has already an electrical installation. The insistence by the respondents for No Objection Certificate from the owner or that the application is to be filed by the owner and the request of the petitioner would be treated as only an additional power supply, is wholly illegal, and therefore, he submits an appropriate direction be issued to the respondents to grant the petitioner a separate independent electricity installation to the leased premises.

5. Per contra, learned Counsel appearing for respondents submits, once a premises has been given the electricity connection, any request for power supply to the said premises will be treated only as an additional power supply and such

a request is to be made by the consumer at whose instance the electricity installation was installed in the said premises initially. Merely because there is a dispute between the landlord and tenant, at the instance of the tenant, a separate and independent electricity installation cannot be installed in the leased premises, when already there is an installation at the instance of the landlord. Therefore, he submits that the endorsement issued by the authorities is legal and cannot be found fault with.

6. In order to appreciate the rival contention, it is necessary to have a look at the Karnataka Electricity Regulatory Commission (Electricity Supply and Distribution) Code, 2000-01 (hereinafter referred to as the ''Code''). Section 214 of the Code defines who is a consumer. Consumer means and include any person who or whose installation, is supplied with electricity or who has executed an agreement with the licensee for the supply of electricity or any person whose installation is for the time being connected for the purpose of receiving electricity or whose installation has been disconnected or who has registered an application with the licensee for power supply connection. Section 4.01 of the Code deals with application for supply. It states that any person desirous or availing power supply shall comply with the requirements mentioned therein besides other specific requirement detailed elsewhere under the Code. Sub-section (ii) provides that application for initial supply and subsequent additional supply of power shall be made in the prescribed format along with the documents mentioned in Sub-section (iii)which includes documents showing proof title to the property or if it is by a lessee a valid lease deed. Section 4.05 of the Code deals with estimate and power sanction, which categorically provides that after power has been sanctioned to a building, if additional power is availed, the new agreement shall before the aggregate power and the earlier agreement will stand cancelled. Clause (h) provides for execution of an Indemnity Bond if necessary indemnifying the licensee against any losses on account of disputes arising between the owner of the premises and the occupant consequent to servicing of the installation. Section 4.12 (ii) provides that in case of domestic/non-commercial installations, the consent of the owner is not necessary where the owner is not the occupant of the premises. In such cases, proof of occupancy such as valid power of attorney or latest rent paid receipt or valid lease deed shall be produced. If the consumer is not the owner of the premises, indemnity bond as per Annexure I shall be produced. Sub-section (v) provides that if any person desires to have electricity for a premises for which the power supply agreement has been terminated (whether the service line is dismantled or not) he will be treated as a fresh consumer and the licensee shall collect the out standing arrears in respect of the said premises from such person before connection is given. Section 34.01 of the Code deals with consumer''s increased load requirement. It provides that the procedure for sanction of additional power will be the same as for a new installation except that dues, if any, shall be cleared before sanction of additional power. Section 36 of the Code deals with transfer of installation. The registered consumer on furnishing a consent letter for transferring the installation and also

the deposits held in his name to the transferee, the installation can be transferred in the name of the transferee. Section 9 of the Code deals with providing electricity installations to commercial/residential building(s)/ Complex(es)/M.S. Building(s).

7. A reading of the aforesaid provisions make it very clear that any person is entitled to get power installation to the premises, which either belong to him or which is in his occupation. For that, he has to make an application in the prescribed form. After sanction, he has to execute an agreement in favour of the respondents. On such agreement being executed, such person shall be recognized as a consumer and then electricity supply would be given to the premises. It is open to the owner of such premises to let- out the building along with power supply. There is no prohibition for the same. Therefore, it is clear either the owner of the premises or a person who is in lawful occupation the premises is entitled to get an independent electrical installation in his name on an application made in the prescribed form and after satisfying other legal requirements. But, in the case of the electrical installation being in the name of the owner/consumer and the said premises is leased to a tenant, even if the requirement of additional load is that of the tenant, it is the consumer/owner who has to make an application for additional power supply. But, if the consumer/ owner is not interested in making such an application, the tenant can make application for additional load with the consent of the owner/consumer. But without the consent of the consumer/owner, the tenant is not entitled to any additional load.

8. The past experience showed, when there is a dispute between the owner and the tenant, the owners taking advantage of similar provisions contained in the earlier regulations, withheld the consent. Therefore, the tenants were put to great inconvenience. In fact, that was one of the mode by which the owners started exerting pressure on the tenants to vacate the leased premises though Rent legislations were passed protecting the interest of the tenants. Taking note of these practical difficulties and the past experience, provisions were made to remedy such mischief. It is in that context, Section 4.12, in particular Sub-section (ii) is provided, which reads as under:

"II) In case of domestic/non - commercial installations, the consent of the owner is not necessary where the owner is not the occupant of the premises. In such cases proof of occupancy such as valid power of attorney or latest rent paid receipt or valid lease deed shall be produced."

A reading of the aforesaid provision makes it clear that the consent of the owner is not necessary where the owner is not the occupant of the premises and when a request for electrical installation or increase of load is made by the occupant of the premises in case of domestic/non - commercial installations. By incorporating the aforesaid provision facilitating the occupant of a premises of a domestic/non-commercial installation to get an electrical installation in his name for the premises of which he is not the owner even against the wishes of the owner, the intention is made clear. That is how the mischief of owners trying to use withholding of electricity as a lever either to evict their tenants or to demand higher rent who were in occupation of domestic/non-commercial installations, was sought to be prevented. If the intention of the Legislature was to give such protection and benefit to all the occupants of the premises, there was no necessity for the Legislature to use the words "domestic/ non-commercial installations". The intention of the Legislation is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also what has not been said. As a consequence, a construction, which require for its support addition or substitution or of words or which results in rejection of words as meaningless, has to be avoided. The Legislature does not waste its words. Ordinary, grammatical and full meaning is to be assigned to the words used while interpreting a provision to honour the rule - the Legislature chooses appropriate words to express what it intends, and therefore, must be attributed with such intention as is conveyed by the words employed so long as this does not result in absurdity or anomaly or unless material - intrinsic or external - is available to permit a departure from the rule.

9. Therefore, when the Legislature has expressly used the words "domestic/non-commercial installations" and deliberately did not use the words "commercial installation" in Sub-section (ii) of Section 4.12, neither the said provision can be read to include "commercial installations" nor the principle underlying that provision can be applied to "commercial installations" on the ground that the commercial installations are not expressly prohibited. Merely because the Legislature did not expressly bar such an application from the occupants of a commercial premises, it cannot be said that under the guise of reading into the provision on the basis of assumed intention, an occupant of a commercial establishment cannot be precluded from making an application for electrical installation without the consent of the owner of the premises. Therefore, if tenant, who is in occupation of the premises wants any additional power, then, the request for additional power should be made by the consumer, namely, the owner or by the tenant, if consent is given by the owner. In other words, without reference to the owner in respect of commercial premises, the tenant cannot secure an electricity installation or additional power to the existing electricity installation, though there is no specific Section prohibiting grant of second or separate electricity installation to the premises. A harmonious reading of the provisions make it clear the law does not recognize second installation to one premises, that is the reason why a provision is made for additional power supply. Any other interpretation would lead to absurdity. Though tenant is in occupation of the premises, stands in the name of the owner who is the consumer, for all purposes, the authorities can proceed only against the consumer and not against the tenant who is actually availing the benefit. Merely because the relation between the landlord and tenant is strained and the lessee is unable to obtain the consent of the landlord for securing additional power, there is no justification to grant permission sought for by the lessee. In fact, after taking into all these

practical problems, a provision is made in the regulation in respect of residential and non-commercial premises, if the consumer is not the occupier, if sufficient proof is being shown that he is the occupant even without the consent of the landlord a provision has been made for grant of separate electricity installation to the occupier. Under these circumstances, the contention of the learned Counsel for petitioner that there is no prohibition under the Code for grant of an independent separate connection to the premises which had already electricity installation supply, is without any substance. Therefore, I am of the view that the petitioner has no right to insist on an independent electrical connection to the leased premises when already the owner of the premises has obtained an electricity installation to the said premises in his name.

Accordingly, the Writ Petition is dismissed.

