

(2000) 06 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No. 14458 of 2000

Noble Plastic Industry, Bangalore

APPELLANT

Vs

Karnataka Power Transmission Corporation Limited,
Bangalore and Another

RESPONDENT

Date of Decision : 30-06-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2000) 6 KarLJ 410

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : Sri M.V. Chandrashekhar Reddy, for the Appellant; Sri N.K. Gupta, for the Respondent

Judgement

1. Though this petition is listed for orders, with the consent of learned Counsel appearing for the parties, it is taken up for final hearing and disposed of by this order.

2. The petitioner, in this petition, is a proprietary concern and is carrying on business as a Plastic Industry. The petitioner is getting electricity supply from the first respondent-Karnataka Power Transmission Corporation Limited (hereinafter referred to as the "Corporation") for its business concern through installation bearing RR No. E-5/P-2091.

3. In this petition, the petitioner has called in question the correctness of the order dated 9th of August, 1999, a copy of which has been produced as Annexure-D, insofar as it relates to the disconnection of electricity supply to the installation of the petitioner bearing RR No. E-5/P-2091. Further, he has prayed for a direction to the respondents to give reconnection of electricity supply to the installation bearing RR No. E-5/P-2091 and for a further direction to the respondents to pay damages to the petitioner in a sum of Rs. 3,15,000-00 towards the loss caused to it on account of the disconnection of the electricity supply to the installation of the petitioner.

4. Sri Chandrashekar Reddy, learned Counsel appearing for the petitioner, in support of the prayer of the petitioner, made two submissions. Firstly, he submitted that Annexure-10 insofar as it relates to disconnection of electricity supply to the installation of the petitioner bearing No. E-5/P-2091 is concerned, is totally illegal and suffers from errors apparent on the face of the record. Elaborating this submission, he pointed out that the reasons given in Annexure-D refusing to reconnect the electricity supply to the installation of the petitioner, which was illegally disconnected, are totally erroneous in law. He pointed out that in impugned endorsement Annexure-D, the two reasons given are -- (1) that the landlord of the petitioner had instructed the respondents to disconnect the electricity supply to the installation of the petitioner; and (2) that there is arrears of electricity charges of Rs. 1,23,122/- in respect of installation bearing RR No. E-5/P-2364 as on July 1999; and installation bearing RR No. E- 5/P-2364 in respect of which there is arrears of electricity charges and installation bearing RR No. E-5/P-2091 are running in the name of one Sri Shankar Reddy and both the installations are situated in one premises; and since both are involved in the same kind of activities, on account of the arrears of electricity charges in respect of installation bearing RR No. E-5/P-2364, though there is no arrears in respect of installation bearing RR No. E-5/P-2091 of the petitioner, the petitioner is not entitled for reconnection of electricity supply which has been disconnected. According to the learned Counsel, since the petitioner is admittedly the tenant in possession of the premises in respect of which electricity supply was being made through installation bearing RR No. E-5/P-2091, so long as there is no arrears of electricity charges in respect of the said installation, it is not permissible for the respondents to disconnect the electricity supply to the said installation either on the ground that the landlord of the premises had instructed the respondents to disconnect the electricity supply or not to reconnect the electricity supply which had been disconnected, or on the ground that in respect of another installation bearing RR No. E-5/P-2364, which is located in the same building, there is arrears of electricity charges. Therefore, he pointed out that impugned endorsement Annexure-D to the extent it is challenged before this Court, is liable to be quashed; and a direction is required to be given to the respondents to restore the electricity supply to the installation of the petitioner. Secondly, he submitted that since on account of illegal disconnection of the electricity supply to the installation of the petitioner on 15th of July, 1999, the petitioner has suffered huge loss of Rs. 3,15,000/-, the respondents should be directed to reimburse the said loss sustained by the petitioner. Elaborating this submission, Sri Reddy pointed out that the petitioner had established business by raising loan from the Karnataka State Financial Corporation (hereinafter referred to as "the KSFC") and every month, the petitioner was required to pay a sum of Rs. 15,000/- to the KSFC towards monthly instalments and interest and another sum of Rs. 4,500/- per month as rent to the landlord. He further pointed out that in addition to the said expenditure, the petitioner had to incur other expenditure towards salary of the employees, etc. Therefore, he submitted that a direction may be given to the respondents to pay a sum of Rs. 3,15,000/- as

compensation to the petitioner for the loss sustained by it on account of the disconnection of electricity supply.

5. However, Sri N.K. Gupta, learned Counsel appearing for the respondents, seriously refuting the contentions urged by the learned Counsel for the petitioner, made three submissions. Firstly, he submitted that since there is no privity of contract between the petitioner and the respondents, the present petition filed by the petitioner before this Court is not maintainable. Secondly, he submitted that since the respondents have disconnected the electricity supply to the installation of the petitioner in the light of the instructions given by the landlord of the premises, who is a registered consumer of the installation within the meaning of Regulation 2.05 of the Karnataka Electricity Board Electricity Supply Regulations, 1988, the petitioner is not entitled to seek for a direction to the respondents to restore electricity supply to the installation of the petitioner so long as the registered consumer does not give his consent for reconnection of electricity supply to the petitioner. Thirdly, with regard to the claim made by the petitioner for award of compensation is concerned, Sri Gupta, while disputing that the petitioner was put to any loss on account of the disconnection of electricity supply, pointed out that the dispute being purely a question of fact as to whether the petitioner has actually sustained any loss and even if he has sustained any loss, to what extent, the said question cannot be adjudicated upon by this Court in exercise of its writ jurisdiction under Articles 226 and 227 of the Constitution of India. He submitted that the remedy, if any, open to the petitioner in the facts and circumstances of the case is to approach the Civil Court for appropriate relief.

6. In the light of the rival contentions advanced by the learned Counsel appearing for the parties, the two questions that would arise for consideration in this petition are-

(1) Whether the impugned endorsement Annexure-D to the extent it is challenged, is liable to be quashed?

(2) Whether the petitioner is entitled for the award of any compensation by this Court on account of the disconnection of the electricity supply as alleged?

7. Now, let me examine the first question.

8. Before I proceed to decide the first question, it is necessary to consider the preliminary objection of Sri Gupta that since there is no privity of contract between the petitioner and the respondents, the writ petition filed by the petitioner is not maintainable. The objection relating to the maintainability of the writ petition is based on the ground that the petitioner not being a registered consumer of the respondents and the petitioner being only a tenant in respect of the premises in question, cannot compel the respondents to supply electricity energy to the installation bearing RR No. E-5/P-2091.

(a) Regulation 2.05 of the Regulations defines "consumer" as follows:

" "Consumer" shall mean a person whose installation is supplied with Electricity

and/or who has executed an Agreement with the Board for supply of Electricity, and includes any person whose installation is, for the time being, connected for the purpose of receiving Electricity or whose installation has been disconnected".

(b) Regulation 2.14 defines "installation" as under:

" "Installation" shall mean the whole of the electric wires, fittings, motors and apparatus installed and wired by or on behalf of the Consumer on one and the same premises starting from the point of commencement of supply".

As contended by Sri Gupta, it may be that the agreement for supply of electrical energy to the installation bearing RR No. E-5/P-2091 was entered into between the landlord of the premises, the aforesaid Shankar Reddy and the respondents and, therefore, he may be the registered consumer. But, from that alone, it is not possible to take the view that a person, who is getting electricity supply through the installation located in the premises of which he is the tenant, is not entitled to challenge the illegal action, if any, of the respondents. It cannot be disputed that the respondents have monopoly in the matter of supply of electrical energy. It cannot also be disputed that the first respondent is an instrumentality of the State. The activities of the respondents are governed by the provisions of the Electricity Act and the Regulations. Therefore, the nature of the contract in the matter of supply of electrical energy, is a statutory contract. The definition of "consumer", referred to above, is an inclusive definition. It provides for three categories of persons -- (a) a person whose installation is supplied with the electricity; (b) a person who has executed an agreement with the Board for supply of electricity; and (c) a person whose installation is, for the time being, connected with the electricity supply or whose installation is disconnected with the electricity supply. Therefore, while the person who has executed an agreement with the Board, can undoubtedly be treated as a registered consumer, in my view, the two other categories of persons, referred to above, can also be treated as consumers of electricity supply from the Board. Therefore, when the electricity supply is obtained to a premises, in my view, the person in occupation of the premises even if he is not the owner of the premises and more particularly, when he is a tenant of the premises, should be treated as a consumer of the electricity. Such a person would fall under the category of "any person whose installation is, for the time being, connected with the electricity supply or whose installation is disconnected with the electricity supply. Even otherwise, it should be held that a person in lawful occupation or possession of the premises in respect of which electricity supply is given through an installation, would be entitled for all the rights the consumer is entitled to enforce against the respondents and such a person also will be liable to the respondents for all the liabilities of a consumer. If such a view is not taken, any dispute between the landlord and the tenant of a premises may deprive a tenant of his right to have continued supply of electricity to his premises, though such tenant or a person in lawful possession of the premises is entitled to continue in possession of the premises. Therefore, in the view I have taken above, I am

unable to accede to the submission of Sri Gupta that the petitioner is not entitled to maintain this petition.

9. Now, the next question is whether the impugned endorsement Annexure-D is liable to be quashed? Admittedly, there is no arrears of electricity charges in respect of the installation bearing RR No. E-5/P-2091 located in the premises where the petitioner is carrying on its business. In my view, merely because the landlord of the premises had instructed the respondents to disconnect the electricity supply to the installation located in the premises occupied by the petitioner and not to restore the same, is not a ground for the respondents either to disconnect the electricity supply to such an installation or to refuse to restore the same so long as, as noticed by me earlier, there are no arrears of electricity charges in respect of the said installation. The electricity and water are essential amenities of life. Any illegal interference in the supply of those amenities would seriously affect the life and liberty of a person. So long as a person is in occupation of a premises as a tenant and the relationship of landlord and tenant continues and so long as there are no arrears of electricity charges, in my view, it is not permissible for the respondents to disconnect the electricity supply to such an installation. It is necessary to point out that if the first respondent, who has taken over the sole right of distribution of electrical energy to the consumers in the State as on this date, is permitted to disconnect the electricity supply to the premises occupied by the tenants at the behest of the landlords, it would result in irreparable injury and would interfere with the tenancy rights of the tenants to continue in the premises. Therefore, so long as there is no default on the part of the tenant or a person in occupation of a premises in which installation for supply of electrical energy is given by the respondents, either in non-payment of electricity charges or violation of any of the conditions of the supply of electrical energy to the said installation, it is not permissible for the respondents to disconnect the electricity supply at the instance of the landlord. If there is any theft of electrical energy or misuse of electricity power in any manner, such a consumer, who is in occupation of the premises would be primarily liable to pay the electricity charges or any other penalty that may be leviable on the consumer by the respondents as per the Regulations of the respondents. However, it is necessary to point out that when it is the primary liability of the person in occupation of the premises like the petitioner to pay the electricity charges to the respondents, it would not absolve the registered consumer of his liability in the event of the respondents not being able to recover the amount either towards electricity charges or penalty from the occupier of the premises. In a situation where the registered consumer permits any other person to occupy the premises and make use of the electrical energy, he would be liable to pay such electricity charges and the penalty, if any, to the respondents along with the person who has been in occupation of the premises. Therefore, it was not permissible for the respondents to disconnect the electricity supply to the premises in occupation of the petitioner through installation bearing RR No. E-5/P-2091 at the instance of the landlord. Further, as noticed by me earlier, so long

as the petitioner is not in arrears of electricity charges in respect of installation bearing RR No. E-5/P-2091, it was not permissible for the respondents to disconnect the electricity supply to the installation located in the premises occupied by the petitioner on the ground that in respect of another installation bearing RR No. E-5/P-2364 located in the premises which is in occupation of some other person, there was arrears of electricity charges, even though both the installations are in the same building. There is no dispute that the installations are two independent installations and the portions of the premises are quite distinct and different though they are in the same building. Under these circumstances, the second reason given in impugned endorsement Annexure-D to refuse to restore the electricity supply to the installation of the petitioner bearing RR No. E-5/P-2091, as rightly pointed out by Sri Reddy, is erroneous in law.

10. Insofar as the contention of Sri Reddy for award of damages against respondents 1 and 2 for the loss caused to the petitioner on account of disconnection of electricity supply is concerned, I am of the view that it is inappropriate for me to examine that aspect of the matter in this petition. Whether the petitioner has actually suffered any loss; and if it has suffered any loss, what is the extent of loss, is a matter, in my view, which could be more appropriately adjudicated upon by a Civil Court. Apart from that, the disconnection of electricity supply has taken place at the instance of the landlord who is the registered consumer. He is not before this Court. If the action of the registered consumer is illegal, he will be primarily liable and accountable for the loss that might have been sustained by the petitioner. Therefore, it is not appropriate for me to examine the prayer of the petitioner for payment of compensation in the absence of the registered consumer. If the petitioner has suffered any loss on account of the disconnection of the electricity supply, it is open to the petitioner to seek appropriate relief against the persons who are liable to compensate the loss, before the Civil Court. All the contentions advanced by learned Counsel appearing for the petitioner and the respondents, on merits for payment of compensation, if any, are left open to be urged before the Civil Court.

11. In the light of the discussion made above, I make the following:

ORDER

(i) The endorsement Annexure-D, dated 9th August, 1999 insofar as it relates to the disconnection of the electricity supply to the installation located in the premises occupied by the petitioner bearing RR No. E-5/P-2091 is concerned, is hereby quashed.

(ii) The respondents are directed to restore the electricity supply to the installation bearing RR No. E-5/P-2091 located in the premises occupied by the petitioner forthwith.

12. In terms stated above, this petition is allowed and disposed of. Rule is issued

and made absolute.