(2006) 09 KAR CK 0019

In the Karnataka High Court

Case No : Writ Petition No. 12162 of 2006

Prakash Conductors, Indian Alumium Rolling Mills (P.) Ltd. and Innova Polypak Private Limited — APPELLANT

Vs

Bangalore Electricity Supply Co. Ltd. — RESPONDENT

Date of Decision : 18-09-2006

Acts Referred:
Electricity Act, 2003 — Section 39, 44

Citation : (2007) 1 KarLJ 95 : (2006) 4 KCCR 2509

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

Bench : Single Bench

Advocate : G.K.V. Murthy and Peumesh, for the Appellant; N.K. Gupta, for the Respondent

Judgement

N.K. Patil, J.—The petitioners in this petition are firms represented by their Proprietor and Manager respectively. In the instant case, they have assailed the correctness of the order dated 31st August 1996 passed by the Chief Engineer, Elec.(General) and the appellate authority of the Karnataka Electricity Board, Cauvery Bhavan, Bangalore, in so far as it relates to confirming the back-billing charges of Rs. 1,77,448/- vide Annexure C. Further, petitioners have sought for a direction to consider the representation dated 20th June 2006 bearing No. PC/2006/11 vide Annexure N and dispose of the same at an early date. Petitioners have further sought for a direction to respondents to give new power connection to the premises bearing No. A-7 and A-8, I Stage, I Phase, Peenya Industrial Area, Bangalore. 58 as requested by second petitioner vide application dated 10th November 2005 vide Annexure L.

2. The brief facts of the case are that, the first petitioner has availed the facility of electricity supply through RR No. W3P-1650 with a sanctioned load of 140 hp and 800 watts. The Technical Audit Cell staff of KEB inspected the installation of the first petitioner herein and noticed that, the seals provided to both the power and lighting meters were missing. Based on the said prima facie evidence, the

concerned technical audit cell has opined that the first petitioner has committed theft of electrical energy and therefore, lodged a compliant with the Peenya Police Station and the same was numbered in Crime No. 222/1993. On the basis of the complaint lodged by respondents through the competent officials, necessary mahazar was drawn in respect of the premises of the first petitioner on 26th June 1993 and seized the said meters for necessary disconnection by the staff. Thereafter, the back billing charges to an extent of Rs. 6,81,514/- was claimed from the first petitioner and the same was communicated by the Assistant Executive Engineer (Elec.) N4, Peenya Sub-Division, T.D. Halli, Bangalore to first petitioner on 7th July 1993 vide Annexure A. Assailing the correctness of the said back-billing charges, the first petitioner has filed the writ petition in W.P. No. 27217/1993 before this Court. The said writ petition was disposed of by this Court, by its order dated 24th September 1993 directing the first petitioner to prefer an appeal as provided under the statue. Thereafter, the first petitioner has filed the appeal on the file of the appellate authority of respondents - Company. The said appeal had come up for consideration before the appellate authority on 31st August 1996. The appeal filed by the first petitioner was dismissed stating that, without prejudice to the criminal case pending adjudication against the first petitioner, petitioner has committed theft of electrical energy by tampering with the seals provided to the main covers of the power and lighting meters at his installation and accordingly, modified the said back billing charges and re-determined the same for a sum of Rs. 1,77,448/- for a period of 101 days from 25th January 1993 to 5th May 1993 at one shift per day basis for a total connected load of 140 H.P. and 800 Watts lighting load as per the calculation sheet enclosed thereto. Further, the said authority directed the first petitioner to pay the said back billing charges. Thereafter, the Assistant Executive Engineer, KEB, N4, Peenya Sub-Dvn., SRS Road, Bangalore, by his communication dated 5th October 1996 has directed the first petitioner to pay a sum of Rs. 03,08,760/- which included revised back billing charges as per the appellate authority order at Rs. 1,77,448/- plus interest from August 1993 to September 1996 at 2% on Rs. 1,77,448/-, i.e. Rs. 1,31,312/-, and specifically stated that, if the first petitioner fails to deposit the said amount, appropriate recovery proceedings would be initiated under the KEB Recovery of Dues Act, 1975, which existed as on that date. Assailing the correctness of the order passed by the first appellate authority of the respondents -Company, the first petitioner has filed the second appeal on the file of the Karnataka Electricity Board (second appellate authority) through the Secretary, KEB, Bangalore and the same was pending. Thereafter, the said appeal was disposed of by the second appellate authority, by rejecting the second appeal filed by the first petitioner by its order dated 24th March 1999 vide Annexure F. Assailing the correctness of the order passed by the second appellate authority dated 24th March 1999, the first petitioner herein has filed the writ petition in W.P. No. 18723/1999. The said writ petition was also disposed of by this Court by its order dated 7th June 2000 on the short ground that, the second appeal has not been considered and disposed of by the Board in terms of the internal management and therefore, there has not been proper disposal of the statutory appeal by the statutory authority and remitted the matter back to the second appellate authority to reconsider afresh and to take appropriate decision in accordance with law. Thereafter, in view of the amendment brought to the Electricity Act 2003, the second appeal was not maintainable and hence, the same was dismissed. Be that as it may.

3. It is the further case of the petitioners that, the second petitioner has filed the application dated 10th November 2005 vide Annexure L, requesting the respondents - Company to give new power connection to enable them to run the second petitioner - Industry. After receipt of the said application filed by the second petitioner and after obtaining ''no objection'' from the first petitioner, the second respondent herein has issued the impugned communication dated 13th June 2006 vide Annexure M directing the second petitioner to pay the balance amount of Rs. 6,81,510/-. Immediately after receipt of the said communication vide Annexure M, the first petitioner has sent a communication dated 20th June 2006 vide Annexure N stating that, petitioners are sick industrial units and without prejudice to their legal rights, the interest may be waived enabling them to settle the matter. In view of non consideration of the application for restoration of electricity supply to the petitioners'' premises and with the above background, petitioners have presented the instant writ petition seeking appropriate reliefs, as stated supra.

4. I have heard learned Counsel appearing for petitioners and learned standing counsel appearing for respondents. After careful perusal of the impugned order passed by the first appellate authority dated 31st August 1996 vide Annexure C, it can be seen that, the said order has been passed after conducting proper enquiry, in full compliance of the directions issued by this Court, and after giving sufficient opportunity to petitioners to put forth their case. The said order has been passed on the basis of the report submitted by the Technical Audit Cell, other relevant material available on file and in compliance of the relevant regulations of the respondent - company existed as on the date of consideration by the first appellate authority, by assigning cogent reasons with reference to the relevant material available on file. As per Sections 39 and 44 of the I.E. Act as well as Regulation No. 44.07 of the Electricity Supply Regulations, 1988 of the Board, the first appellate authority has specifically recorded a finding that, any interference with the metering equipment of Associated accessories will be a prima facie evidence towards the consumer or his agent or his servant committing theft of energy. In spite of giving sufficient opportunity to the first petitioner, except pleading orally that, he has not made any theft of electrical energy, has failed to produce any authenticated document to show that, the seals provided to the lighting and power meters were in good condition and that, there was no theft of energy at his installation for the period on or after 21st January 1993 to 5th May 1993 for which the consumer -first petitioner himself is solely responsible. Accordingly, the first appellate authority has modified the back billing charges and re-determined the same by charging a sum of Rs. 1,77,448/- for a period of 101 days for the period from 25th January 1993 to 5th

May 1993 at one shift per day basis for a total connected load of 140 H.P and 800 Watts lighting load as per the calculation sheet, that was enclosed to the order. The said reasoning given by the first appellate authority is after conducting a thorough enquiry and after giving sufficient opportunity to the first petitioner. Even though an opportunity was afforded to the petitioner, he has failed to utilize the same by producing any supportive document to substantiate that, he has not committed any theft of electrical energy. Therefore, interference by this Court after lapse of nearly one decade is not justifiable nor I find any good grounds for such interference. Hence, the first prayer sought for by petitioners in the instant writ petition is liable to be dismissed as devoid of merits and also on ground of delay and laches at the threshold. Accordingly, the said prayer is rejected.

5. So far as the second prayer sought for by petitioners to consider the representation dated 20th June 2006 vide Annexure N is concerned, I am of the view that, without filing objections to the communication dated 13th June 2006 vide Annexure M, they cannot seek such a prayer, until and unless petitioners pay the balance amount as claimed by second respondent in their communication. Such a direction cannot also be issued on the ground that, first petitioner himself has given a representation-cum- communication dated 20th June 2006 vide Annexure N, wherein the first petitioner has categorically admitted that, the amount due as re-determined by the first appellate authority is for a sum of Rs. 1,77,448/- as back billing charges and the only request made by the first petitioner before the respondents was to waive off the interest portion. If that is so, it is very much open for the petitioners to file a detailed consolidated representation cum reply to the communication dated 13th June 2006 vide Annexure M, within two weeks from the date of receipt of a copy of this order. In case such reply cum objection is filed by the petitioners to the communication dated 13th June 2006 issued by second respondent, the second respondent is directed to receive the same and pass appropriate order in strict compliance of the relevant provisions of the K.E.R.C.(Electricity Supply and Distribution) Code 2000-01 and dispose of the same, within two weeks from the date of receipt of reply cum objection filed by petitioners to Annexure M dated 13th June 2006. Further, it is made clear that, the first petitioner shall deposit a sum of Rs. 06 lakhs along with his request to consider the application dated 10th November 2005, submitted through the second petitioner and the competent jurisdictional Officer is directed to receive the same, and pass appropriate orders, if it is permissible under the provisions of the Code within a period of one week from the date of deposit of Rs. 06 lakhs by the petitioners. Further, it is clarified that, the said deposit, which is directed to be made by the petitioners would be subject to the final outcome of the decision to be taken by respondents in response to the reply cum objection to be filed by the petitioners to the impugned communication dated 13th June 2006.

6. With these observations, the writ petition filed by petitioners stands disposed of.

7. Sri. N.K. Gupta, learned Counsel appearing for respondents is permitted to file vakalath on behalf of respondents within two weeks from today.

