(2006) 10 KAR CK 0007

In the Karnataka High Court

Case No : Writ Petition No. 11139 of 2005

S. Somashekar APPELLANT

Vs

Karnataka Power Transmission Corporation Limited and Others RESPONDENT

Date of Decision : 28-10-2006

Acts Referred:

Citation : (2006) 10 KAR CK 0007

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

Bench : Single Bench

Advocate : S. Hemachandra, for Chandra and Nath Associates, for the Appellant; H. Srinivas Rao, for Respondents-2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The petitioner, assailing the correctness of Annexure-E, dated 21-12-2001 passed by Executive Engineer and Annexures-H and J passed by Assistant Executive Engineer, dated 7-9-2004 and 8-12-2004 respectively, holding that the petitioner is not liable to pay any amount towards audit short claim, has presented this writ petition. Further, petitioner has sought to direct the respondents to reimburse the 50% of the total audit short claim deposited by the petitioner amounting to Rs. 21,341.25 paise along with interest and also to direct the respondents to reconnect the electrical supply to Meter No. 182.

2. The grievance of the petitioner in this writ petition is that, he has constructed a theater after obtaining necessary permission from the Competent Authority and after obtaining electricity connection through Meter bearing No. KP. 182 for the purpose of construction of the theatre on his land and for drawing drinking water from the bore-well situated adjacent to the theatre. It is shock and surprise to the petitioner when the respondents have disconnected the electricity supply to the Meter No. KP. 182. Immediately, he has brought the same to the notice of the authority and filed application for one more electrical connection. The said request of the petitioner has been considered and respondents-company has

sanctioned the same through the Meter bearing KP. No. 214 and he is promptly paying all the charges towards consumption of electricity regularly till date. When things stood thus, petitioner has received notice from the 2nd respondent on 24-3-2000, wherein 3rd respondent has raised a bill for a sum of Rs. 42,681/- as Audit short claim in respect of the Meter bearing No. KP. 182, with a direction to pay the said amount within thirty days from the date of the receipt of the said demand notice, failing which, appropriate proceedings will be initiated and electricity supply will be disconnected. Immediately, after receipt of the said notice dated 24-3-2000 vide Annexure-A, petitioner has filed a detailed reply vide Annexure-B, dated 30-3-2000. Thereafter, 3rd respondent has issued one more notice dated 22-7-2000 vide Annexure-C, directing the petitioner to pay Rs. 42,681/- failing which electricity supply provided to the Meter bearing No. K.P. 214 will be disconnected. To that notice also petitioner has filed his detailed reply. After filing the reply to the said notice, he has filed an appeal before the 2nd respondent-Appellate Authority, assailing the correctness of the demand notice issued by the 3rd respondent by depositing 25% of the demanded amount. The petitioner has taken a specific stand before the Appellate Authority that, after the lapse of 14 years 3rd respondent cannot demand audit short claim from the petitioner and at most he can demand a audit short claim of previous six months only from the date of issuance of first notice. But the said aspect has been neither considered nor any specific finding has been given by the Appellate Authority. The Appellate Authority has dismissed the appeal and confirmed the demand notice issued on 21-12-2001 holding that petitioner is liable to pay only 75% of the demanded audit short claim and the remaining 25% be recovered from the erring officials concerned vide Annexure-E. Assailing the correctness of the same, petitioner has filed second appeal before the 2nd Appellate Authority. The said appeal is also dismissed as not maintainable. Having regard to these backgrounds, petitioner herein has presented the instant writ petition, assailing the correctness of the impugned orders as referred above.

3. I have heard learned Counsels appearing for petitioner and learned Counsel appearing for respondents.

4. After careful perusal of the materials available on record, including the impugned order passed by the Appellate Authority on 21-12-2004 vide Annexure-E, I do not find any error, much less material irregularity as such committed by the Appellate Authority in confirming the demand notice issued by the 3rd respondent for a sum of Rs. 42,681/- as audit short claim. It is significant note that, in Annexure-A, dated 24-3-2000, it is specifically pointed out that, audit short claim is in respect of Meter No. K.P. 182 from 1st January, 1992 to 5th May, 1999. Further, it is specifically referred that, petitioner has taken electricity connection for drawing water for drinking purpose and construction of a theater through the bore-well and permission has been given under LT 5 tariff and subsequently petitioner has filed an application after completion of theater and his request has been considered and a separate sanction has been made through Meter No. K.P. 214 under LT 3 tariff. The said reference made is in strict

compliance of the relevant Code. In the instant case, as rightly pointed out by the learned Counsel appearing for respondents, the audit short claim is in respect of Meter No. K.P. 182 under the then existing Code and not under the existing Code of 2001. This fact has been rightly considered by the Appellate Authority, after affording an opportunity to the petitioner and after conducting proper enquiry. Therefore, I do not find any error committed by the Appellate Authority in issuing demand notice claiming audit short claim for the period from 1st January, 1993 to 5th May, 1999. But there was some delay by the jurisdictional Local Officer in not sending the demand notice well in time. This fact is also taken into consideration by the Appellate Authority and it has directed the petitioner to pay only 75% of the demand amount and the remaining amount of 25% is directed to be recovered from the jurisdictional officer because of the delay on his part in issuing the demand notice. The said reasoning given by the Appellate Authority is just and reasonable, having regard to the facts and circumstances of the case in hand. As far as liability is concerned, petitioner has not made out any ease, because the tariff applied to the electricity sanctioned through Meter No. 182 at the time of construction of theater for drawing the water for drinking and construction of theater is under LT 5 tariff and thereafter, petitioner himself has categorically stated in paragraph 3 of the writ petition that he has filed application for one more connection and respondent has considered his request and sanctioned the same through Meter No. K.P. 214 under LT 3 tariff. If that is so, the amount demanded under the impugned notice as audit short claim for Meter No. 182 from 1st January, 1993 to 5th May, 1999 is in strict compliance of the relevant Code of Karnataka Electricity Board Electricity Supply Regulations, 1988. Therefore. I do not find any justification or good grounds to interfere in. the well-considered order-passed by the Appellate Authority. Nor has the petitioner made out any good ground to entertain this writ petition.

5. Having regard to the facts and circumstances of the case as stated above, the writ petition filed by petitioner is dismissed.

Further, it is needless to clarify that, petitioner is directed to pay remaining 25% of the amount as demanded in the impugned notice regarding audit short claim within four weeks from today. If the said amount is paid by the petitioner within four weeks from today, the jurisdictional authority is directed to restore the electricity supply to the petitioner''s installation forthwith.

