

(2014) 11 KAR CK 0179

In the Karnataka High Court

Case No : Writ Petition No. 49110 of 2013 (GM-KEB)

Shakila A. Shetty

APPELLANT

Vs

The Assistant Executive Engineer (Elec.)

RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

Electricity Act, 1910 — Section 20(3)

Citation : (2014) 11 KAR CK 0179

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : A. Ananda Shetty, Advocate for the Appellant; B. Rudragowda, Advocate for the Respondent

Judgement

B.S. Patil, J.—In this writ petition, petitioner has challenged the demand notice dated 14.2.1995 vide Annexure-A, order of Appellate Authority dated 18.09.2013 vide Annexure-B and the fresh demand notice dated 01.10.2013 issued vide Annexure-C pursuant to the order passed by Appellate Authority.

2. Petitioner has been running an ice and cold storage plant in Udupi Town for which electricity was supplied through meter bearing R.R. No. 9047. On the basis of allegation that there was tampering of meter by the petitioner and theft of electricity, an inspection was conducted on 09.02.1995. Based on such inspection, a demand notice was issued demanding a sum of Rs. 3,16,898/- towards back-billing charges. Petitioner filed objections to the same. She also approached this Court challenging the demand notice in W.P. No. 4572/1995. Said writ petition was admitted and an interim order was granted restoring power supply to the petitioner's plant, subject to deposit of 25% of the demanded amount i.e. Rs. 79,225/- and the same was disposed of by order dated 14.7.1997 directing respondents to conduct a fresh enquiry in the matter.

3. According to petitioner, in the course of enquiry, she could not be present before the Authority due to illness. However, the Authority without considering the objections filed by petitioner, issued a fresh demand notice dated 9.11.1998.

Aggrieved by the same, petitioner filed a suit in O.S. No. 427/1997. The said suit was dismissed as not maintainable and appeal filed against the same was also dismissed.

4. In the meanwhile, parallel proceedings were initiated in Criminal Case No. 2672/1995 for taking penal action against the petitioner for alleged theft of electricity. The criminal case was dismissed on 21.1.1998, as is evident from Annexure-D. Subsequently, based on the allegation of tampering of meter and illegal extraction of power, the Authorities issued a demand notice on 4.2.2009 demanding a sum of Rs. 9,62,575/- towards back-billing charges alongwith interest. This was challenged in "an" appeal before the Appellate Authority. Appellate Authority having heard the matter, vide its order dated 18.9.2013, has confirmed the levying of interest for the period from 14.2.1995 to 17.3.2009 and has waived the interest payable from 18.3.2009. Subsequent to the order of Appellate Authority, a fresh demand notice dated 1.10.2013 has been issued to the petitioner. Aggrieved by the said demand notice and order of Appellate Authority, petitioner has filed this writ petition.

5. Heard learned counsel for petitioner and perused the materials on record.

6. The contention urged by learned counsel for petitioner is that Criminal Court has acquitted the petitioner of the charges of theft of electricity disbelieving the version of Prosecution. Therefore, it was not open for respondents to raise a fresh demand based on the very allegations and materials that were rejected in criminal proceedings.

7. It is next contended by learned counsel for petitioner that though the suit filed by petitioner was dismissed as not maintainable, dismissal of the suit has been made a basis for the findings recorded against the petitioner by Appellate Authority. He has placed reliance on judgment of Apex Court in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, . Attention of Court is drawn to paragraph-34 of the aforesaid decision to contend that when a criminal case was dismissed and petitioner was acquitted by a judicial pronouncement holding that case put forward by Prosecution had not been proved, it would be unjust and unfair to allow the findings recorded in departmental proceedings on the basis of the very materials.

8. These contentions have been strongly refuted by learned counsel for respondents.

9. Having bestowed my anxious consideration to the materials on record and the contentions urged, I find that both the contentions urged by learned counsel for petitioner are untenable in the facts of present case. The criminal case has ended in acquittal by extending benefit of doubt to the accused and the Court has come to the conclusion that there was inconsistency in the evidence of PWs 1 and 2 as to when they visited petitioner's ice and cold storage plant; there was no material to prove whether accused was present at that time and that she was incharge of the ice plant. Sri Ravi Karantha, Assistant Executive Engineer, who

had accompanied the inspecting team was not cited as witness and examined by prosecution, therefore, mere pleading was not sufficient to prove that accused had committed alleged theft of electricity.

10. In addition, Criminal Court further referred to the requirement stipulated under Section 20(3) of the Indian Electricity Act, 1910 allegedly obligating notice to be issued to the petitioner regarding inspection and in the absence of such mandatory notice and in the absence of any direct evidence that accused had tampered the meter, it had to be held that Prosecution had failed to establish essential ingredients of the Electricity Act.

11. Apart from the fact that in the criminal proceedings, by giving benefit of doubt, petitioner was acquitted, it is also necessary to notice that Criminal Court has wrongly attracted the provisions of Section 20(3) of Electricity Act, which has no application to the facts of the present case. Be that as it may, in the facts of Capt. M. Paul Anthony's case (supra), which pertains to criminal prosecution and departmental proceedings based on similar allegations, the Criminal Court had come to the conclusion that there was no search conducted nor was any recovery made from the residence of delinquent. The whole case of Prosecution had been thrown out and appellant was acquitted. But, in the departmental proceedings which was conducted ex-parte, a finding was recorded directly contrary to the findings recorded in the Criminal Court regarding raid and recovery which was found conducted at the residence of the delinquent. Therefore, Apex Court observed that it would be unjust, unfair and oppressive to allow the findings recorded at the ex-parte departmental proceedings to stand in the wake of the judgment in the criminal case.

12. The facts and circumstances of present case have no similarity to the one involved in Capt. M. Paul Anthony's case (supra), hence contention of learned counsel for petitioner cannot be accepted.

13. Similarly, the next contention urged that Appellate Authority was carried away by the dismissal of suit is also not tenable in the facts of present case. Though Appellate Authority has made reference to the dismissal of the suit, it has not based its finding on the dismissal of suit. The suit, as urged by petitioner, was dismissed as not maintainable. It is true mere dismissal of the suit on the ground that claim was not maintainable cannot be a basis for the respondent or for that matter for the Appellate Authority to hold against the petitioner.

14. In the instant case, a careful perusal of the order passed by Appellate Authority discloses that evidence of witnesses have been considered and finding has been recorded holding that there was tampering of seal put to the electricity meter and thereby it was established that there was unauthorised use of electricity. It is necessary to notice here that Appellate Authority has taken note of the facts and circumstances of case in waiving interest to be levied from the date of filing of appeal till the date of order. In such circumstances, I do not find any illegality in the approach adopted by Appellate Authority in re-appreciating

the materials on record and in coming to the conclusion that back-billing charges demanded by respondents was justified.

15. Hence, I do not find any merit in this writ petition and the same is, therefore, dismissed.