

(2000) 07 KAR CK 0082
In the Karnataka High Court
Case No : Writ Petition No. 31929 of 1994

Sri. Krishnappa by LRs.

APPELLANT

Vs

The Karnataka Electricity Board and Another

RESPONDENT

Date of Decision : 19-07-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity (Supply) Act, 1948 — Section 49, 79
Karnataka Electricity Board Supply Regulations, 1988 — Regulation 4.34

Citation : (2000) 3 KCCR 2143

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : B.C. Seetharama Rao, for the Appellant; N.K. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Dattu, J.—Sri Krishnappa, when he was alive, had filed this writ petition under Article 226 of the Constitution, inter alia seeking a writ to quash the notice of demand/letter in No. AEE(E) W3:SA:2554-56 Dated 24.2.1994 issued by Assistant Executive Engineer-second Respondent herein. Alternatively, he was seeking a direction to the Respondents to provide electricity supply to his premises, bearing No. 5, v. Cross, Magadi Road, Bangalore, by collecting only the deposit for new connection without pressurising the Petitioner for payment of arrears of the third party.

2. During the pendency of this petition, Sri Krishnappa expired without "light" and now his wife Smt. Nagarathnamma has come on record with the permission of this Court. She is prosecuting this petition filed by her late husband. Now she wants to improve the case, therefore, she has filed an interlocutory application requesting this Court to permit her to amend the prayer in the petition to question the legality or otherwise of the provisions of Regulation 4.34 of Karnataka Electricity Board Supply Regulations, 1988, (hereinafter for the sake

of brevity referred to as "Regulations"). This Court by its order dated 22.8.1997 has allowed the request made in the application. Pursuant to the order so made, Petitioner has filed amended writ petition incorporating the prayer to strike down Regulation 4.34 of the Regulation as ultravires of the Act.

3. Brief facts are-

Petitioner claims that she is the absolute owner of the property bearing No. 50, v. Cross, Magadi Road, Bangalore, and it appears, her husband had let out the said premises to M/s Canara Plastics represented by Mr. Alen D'Souza on a monthly rent of Rs. 1,300/-. Since there was continuous default in paying rentals by the tenant and since Petitioner wanted the premises for bonafide use and occupation of her family members, had filed an eviction petition and also obtained an order of eviction against the tenant. It appears, when the premises was in occupation of the tenant, he had obtained 20 H.P. Electricity connection to the premises for his manufacturing activities from the Respondent-Board. For this purpose, Board had installed an electric meter bearing RR No. W.3P 1131/P2-109. It appears, on a surprise inspection by the inspecting wing of the Board, it was noticed that the tampering of electric meter by the consumer of electrical energy and this commission of serious offence resulted in disconnection of supply of electrical energy by the Board to the consumer. It is stated in the petition, that for this offence committed by the consumer, the Board had not only initiated criminal proceedings but also issued a demand notice, interalia claiming backbilling charges in a sum of Rs. 1,45, 800/-. The events come to an end there. Since the consumer did not deposit the backbilling charges, the Board had not restored the supply of electricity to the consumer. The consumer vacated the premises which was in his occupation without paying the backbilling charges.

4. Petitioner, the land lord of the premises thereafter approached the second Respondent-Assistant Executive Engineer (Elecl.) for supply of 5 H.P. electrical energy for the same premises to facilitate her kin to start the power loom. In response to this request, she was informed by the Respondents that fresh supply of electrical energy will be made to the premises only after payment of electrical energy dues in respect of electric meter bearing RR No. W.3P-1131/P2-109 levied and demanded from the previous consumer of electrical energy. Since the request made to supply 5 H.P. power without attaching any conditions was negatived by the Board and its officers, Petitioner is before this Court for the reliefs indicated by me earlier.

5. Sri Seetharama Rao, learned Counsel for the Petitioner submits that since there was no privity of contract between the Petitioner and the Respondents to pay the arrears of a third party, who was only a tenant of the premises owned by Petitioner, she cannot be made liable for the crimes committed by the tenant and therefore, the Respondents are obliged to recover any amounts due from the previous consumer of electricity by resorting to procedures under common law and not from the Petitioner, who is seeking the supply of electrical energy through a new installation and therefore, it is stated that the action of the

Respondents is arbitrary, invalid and illegal. It is further contended that the second Respondent-Officer of the Board is not justified in demanding any amounts from the Petitioner for the defaults committed by previous consumer of electrical energy, except the deposits to be made for sanctioning of new connection for supply of 5 H.P. power, which Petitioner has sought for by filing fresh application for the same premises. In sum and substance, the contention of the learned Counsel seems to be that in the absence of any contractual obligation to the contrary, the Respondents are estopped from making any demands for payment of arrears, penalties, etc towards the previous liabilities of the consumer of electrical energy. In view of this, it is stated that the demands made by the second Respondent in his communication No. AEE (E) AAO-1/SAI/W3-1430-33 dated 28.7.1992 against the Petitioner for providing a fresh connection to the supply of electrical energy is highly arbitrary, unfair, unjust and unconscionable. Secondly, it is contended that the Regulation 4.34 which authorises the Board to recover the arrears of an erstwhile consumer from the owner of the building is unreasonable, unconstitutional and ultravires. In view of this, submits that the Petitioner is justified in seeking the reliefs sought in the writ petition. Lastly, in support of the additional prayer made, the learned Counsel would submit that the provisions of Section 49 read with Section 79 of Indian Electricity (Supply) Act, 1948, does not authorise the Board to frame impugned Regulations and assuming Section 79 of the Act, authorises the Board to frame the impugned Regulations, the Regulation 4.34 of Karnataka Electricity Board (Supply) Regulations, is unconstitutional as it places unreasonable restriction on the prospective consumer. Therefore, the said Regulation requires to be struck down by this Court as unconstitutional, ultravires of the Statutes and arbitrary. In support of this contention, the learned Counsel relies upon the observations made by Apex Court in the case of *Isha Marbles Vs. Bihar State Electricity Board and Another*, .

6. Per contra, Sri N.K. Gupta, learned Counsel for the Board ably justifies the impugned Regulations and the demands made by the Board for granting new connection for supply of electricity to the same premises. In aid of his submissions, the learned Counsel relies upon the law declared by Apex Court in the case of *Ferro Alloys Corpn. Ltd. Vs. A.P. State Electricity Board and another*, , *M/s. Hyderabad Vanaspathi Limited Vs. Andhra Pradesh State Electricity Board and Others*, and the observations made by Kerala High Court in the case of *Seena B. Kumar Vs. Asst. Executive Engineer, Electrical Major Section, Mavelikkara and Others*, .

7. The Karnataka Electricity Board ("Board" for short) in exercise of its powers under Sections 49 and 79(j) of the Indian Electricity (Supply) Act, 1948, has framed Regulations known as Karnataka Electricity Board Supply Regulations, 1988 ("Regulations" for short) to regulate the supply of power to its consumers.

8. Section 79 of the Electricity (Supply) Act, 1948, empowers the Board to make regulations to provide for matters specified therein, inter alia, the matters

specified include principles governing the supply of electricity by the Board to persons other than the licensees u/s 49. In exercise of powers conferred by Section 79 read with Section 49, the Board has framed Regulation 4.34. The said Regulation is as under-

4.34: 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 fresh consumer and the Board reserves the right to collect the outstanding arrears from such person before connection is given.

9. An analysis of the aforesaid Regulation would only indicate that if any person desires to have electricity for premises for which the power supply agreement has been terminated, he will be treated as a fresh consumer and the Board reserves its right to collect the outstanding arrears from such person before connection is given. However, learned Counsel Sri Seetharama Rao, suggests that the expression "such person" used in the Regulation is referable to previous consumer and not the fresh applicant, since the fresh applicant did not have privity of contract with the Board agreeing to pay the electricity dues of the previous consumer. The word "such" means, of the kind or degree already described. The expression "such" in its grammatical usage and in its natural ordinary sense is understood to refer to the last antecedent, unless the meaning of the sentence would thereby impaired. The word "such" indicates something just before specified or spoken of, that is prominently and not merely preciously. It particularises the immediately preceding antecedent and not everything that has gone before. It is well settled rule of construction that the true meaning to be given to the word will have to be decided from the nature of the provision, the scheme of the Section or Rules or Regulation and the content in which it occurs. In my view, the use of the expression "such person" in the Regulation really indicates the person who is seeking the supply of electricity for a premises for which the power supply agreement has been terminated by the Board. The object of the later part of the Regulations seems to be to safeguard the revenue of the Board and to discourage collusion between the owners and tenants and to see that the revenue is recovered from the person, who seeks fresh connection to the same premises. The provisions of the impugned Regulation is reasonable restriction and this restriction has rational and reasonable nexus with the object to be achieved by the Board, namely, not only to supply electricity for a price but also to recover the same.

10. Section 79 of the Act authorises the Board to make Regulations by notifying the same in the official gazette not inconsistent with the Electricity (supply) Act, 1948, and the Rules framed thereunder. One such power is to frame Regulations governing the supply of electricity by the Board to persons other than Licensees u/s 49 of the Act. In exercise of this power, the Board has framed Regulation 4.34 of the Regulations, which in my opinion, authorises the Board to collect the outstanding arrears of electricity charges from a person, who desires to have electricity for a premises for which the power supply agreement has been

terminated. Such a provision was not in the Bihar State Electricity Act. The Apex Court while dealing with *Isha Marbles Vs. Bihar State Electricity Board and Another*, was pleased to observe-

Electricity is public property. Law, in its majesty, benignly protects public property and behoves everyone to respect public property. Hence, the courts must be zealous in this regard. But, the law, as it stands, is inadequate to enforce the liability of the previous contracting party against the auction-purchaser who is a third party and is in no way connected with the previous owner/occupier. It may not be correct to state that if it is held as above then it would permit dishonest consumers transferring their units from one hand to another, from time to time, infinitum without the payment of the dues to the extent of lakhs and lakhs of rupees and each one of them can easily say that he is not liable for the liability of the predecessor in interest. No doubt dishonest consumers cannot be allowed to pay truant with the public property but inadequacy of the law can hardly be a substitute for overzealousness.

11. The Kerala High Court in the case of *Seena B. Kumar Vs. Asst. Executive Engineer, Electrical Major Section, Mavelikkara and Others*, , while considering Regulation 15(c) of Conditions of Supply of Energy Regulations, read with Regulation 4.34 of the K.E.B. Electricity Supply Regulations, was pleased to observe-

It is evident from the above mentioned principle laid down by the Supreme Court that if there is a law to recover the amount from the consumer, the Electricity Board is bound to do so, since electricity is a public property. In the instant case, there are specific provisions in the conditions of supply of electricity energy to insist that if reconnection is required for anybody, he has to clear the arrears and that he would be recouped by the Court on recovery of the amount from the previous consumers.

12. The Supreme Court in the Case of *M/s. Hyderabad Vanaspathi Limited Vs. Andhra Pradesh State Electricity Board and Others*, was pleased to observe as under-

It is the statutory duty of the Board to arrange for the supply of electricity throughout the State and for transmission and distribution of the same in the most efficient and economical manner. For that purpose, it has necessarily got to prevent unauthorised user, pilferage or malpractices by the consumers. Hence the necessary safeguards have to be provided as part of the conditions of supply so that the consumers will be bound by them. While on the one hand, the Board has to recoup the loss suffered by such pilferage or other malpractices, it has also on the other got to stop immediately the continuation thereof. Hence the terms and conditions of supply have to provide for compensation as well as immediate disconnection.

13. In view of the observations made by Apex Court in the aforementioned division, it cannot be said that the Regulation is either arbitrary or

unconstitutional. The provisions of Regulation 4.34 is a reasonable restriction and this restriction has rational and reasonable nexus with the object to be achieved by the Board namely, recovery of amounts due to it from the consumer of electricity. While achieving this object, the Board by its impugned Regulations places a restriction of not granting fresh power supply to the same premises in respect of which if there has been an installation which is in arrears. Therefore, it can safely be said that the impugned provisions are intravires of the Act.

14. Since Petitioner fails on this legal issue, the other relief sought for the her to quash the impugned communication dated 24.2.1994 and further direction to the second Respondent to provide electricity to the premises in her occupation without insisting on the payment of arrears in respect of electric meter bearing RR. No. W. 3P1131/P2-109 cannot be granted.

15. Accordingly, petition fails and it is dismissed. Rule discharged. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.