

(2006) 11 KAR CK 0047
In the Karnataka High Court
Case No : Writ Petition No. 31809 of 2001

Triveni Resorts Daba Towers Udupi

APPELLANT

Vs

The Asst Executive Engineer (Elec) Urban Sub Div Urban Sub-Division, K.P.T.C.L., The Superintending Engineer (Elec) and First Appellate Authority and The Chief Engineer Electricity) KPTCL Mangalore Zone and II Appellate Authority

RESPONDENT

Date of Decision : 02-11-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2006) 11 KAR CK 0047

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

Bench : Single Bench

Advocate : A. Ananda Shetty, for the Appellant; N.K. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The petitioner, questioning the correctness of the impugned notice dated 22nd October 1999 issued by first respondent, the order dated 12th October 2000 passed in R.A.No. 607/2000 on the file of the first appellate authority - second respondent herein and the order dated 17th May 2001 on the file of the second appellate authority - third respondent herein vide Annexures A and C and D respectively, has presented the instant writ petition. Further, petitioner has sought for a mandamus, directing the respondents to refund the amount deposited by the petitioner in accordance with the demand notice under Annexure A dated 22nd October 1999 issued by first respondent, Or in the alternative direct the respondents to adjust the said amount in future bills to be raised in respect of the Meter of the petitioner.

2. It is not in dispute that, the petitioner herein is running a Hotel under the name and style of "Classic Dining Bar" at Daba Tower, Udupi. The said establishment is getting the electrical supply through the Electrical Meter bearing RR No. 14664/22 since the inception of the Hotel, that is on 4th October 1997.

Initially the sanctioned load of power to the unit was 30 K.W chargeable under LT 3 tariff based on the energy consumed by the installation made in the premises such as lights, fans air conditioners etc. When things stood thus, on 5th December 1998, the officials of the respondents - Company have inspected the installation of the petitioner on 4th January 1999 and found that, the reading of the consumption of energy showed 46.05 KW, which has exceeded by 16.05 K.W. and is more than the sanctioned strength of 30 K.W. On the basis of the said report, the jurisdictional competent authority has issued the back billing charges for a period of six months with penalty in accordance with the Electricity Supply Regulations (ESR) 1988 under Clause No. 44(a)(ii). Assailing the correctness of the said back billing demand notice, the petitioner herein has filed the appeal on the file of the first appellate authority and the same was numbered as R.A.No. 607/2000. The first appellate authority, after hearing the petitioner and its counsel and after considering the objections filed by petitioner and also the evidence of the officials of respondents - Company, viz. Sri. Rama Shetty, Assistant Executive Engineer (El.) M.T Sub Division, Udupi and Sri. Madhava Rao, Assistant Accounts Officer (Rev.) and after giving sufficient opportunity to petitioner to have his say in the matter and after taking into consideration the grounds urged in the memorandum of appeal/objections, by its order dated 12th October 2000, dismissed the appeal filed by the petitioner holding that, the demand of back billing notice issued by the jurisdictional Officer is in order vide Annexure C. Assailing the correctness of the said order passed by the first appellate authority, the petitioner herein has filed the second appeal on the file of the second appellate authority and the same was numbered as R.A.No. 30/2000. The second appellate authority, after considering the relevant material available on file, after affording an opportunity to both parties, and after considering the amended Clause 44.01(a)(ii) of the ESR -1988, has also dismissed the second appeal filed by petitioner and held that, petitioner is liable to pay the bill amount demanded by respondents. Assailing the correctness of the orders passed by both the authorities and the impugned demand notice, petitioner has presented the instant writ petition seeking appropriate relief as stated supra.

3. I have heard learned Counsel appearing for petitioner and learned standing counsel appearing for respondents - Company.

4. On going through the said order passed by the second appellate authority, it is manifest that, the back billing demand issued to the petitioner is in strict compliance of the said clause and that, the said authority has come to the said conclusion after giving sufficient opportunity to the petitioner. But petitioner has failed to substantiate his case by producing any authenticated document or elicit anything in the cross examination of the witnesses examined by the respondents - Company. It is significant to note that, it is specifically pointed out by the second appellate authority that, as per the Internal Audit Wing of the respondents - Company, due to delay in preferring the claim, the respondents - Company has already suffered loss in the form of interest and therefore, the second appellate authority felt that, the petitioner - appellant has saved the

interest and is asked to pay the amount on a later date. Further, the said authority observed that, necessary demand notice was served on the petitioner - appellant on 22nd October 1999, in which the petitioner was asked to pay the penalty providing one month's time and also with a specific clause that, if petitioner has any objections, it can file the same within eight days. Therefore, the second appellate authority observed that, even though petitioner was afforded sufficient opportunity, petitioner has not produced any documentary evidence in support of its case. Therefore, it opined that, if the demand notice had been issued well in time, petitioner would have been liable to pay the interest as per the existing regulations. This is nothing but a lenient view taken by the first appellate authority as well as the second appellate authority and this fact has been brought to the notice of the petitioner and after affording an opportunity to the petitioner and considering the objections filed by it, the said authorities have come to the conclusion that, the claim made by the competent authority of the respondents - Company is as per the provisions of ESR 1988 which is binding on the consumer-petitioner as per the existing regulations and that, petitioner has failed to make out any good grounds. It is further specifically pointed out by the second appellate authority that, if it is the case of petitioner - appellant that, the additional 5 A.Cs. and one water lifting pump was installed on 20th December 1998 and removed on 16th March 1999, petitioner - appellant ought to have produced substantive documentary evidence. But, in the instant case, petitioner has not produced any documentary evidence in support of the said plea. However, on a careful perusal of the energy consumption pattern of the petitioner unit right from January 1998 to June 1999 month-wise, it can be seen that, the energy consumption in units is very much in the same range throughout. If according to the petitioner, additional motors were installed in December 1998 and removed on March 1999, there should have been abnormal increase in the energy consumption only during the months of December 1998 to March 1999, during which period the alleged equipments were installed. Therefore, the specific ground taken by the petitioner has no substance and the same is not beneficial to him. Both the authorities after critical evaluation of the oral and documentary evidence and other relevant material available on file have recorded concurrent finding of fact against the petitioner and specifically pointed out that, in spite of giving sufficient opportunity, the petitioner has failed to substantiate its case and the grounds urged in the memorandum of appeal. Therefore, in view of concurrent finding of fact recorded by both the authorities, after appreciation of oral and documentary evidence and other relevant material available on file, including the relevant existing regulations, I am of the considered view that, the impugned demand made is in strict compliance of the regulations and that, the orders passed by the first appellate authority and the second appellate authority are also in accordance with the Regulations. Therefore, interference by this Court by invoking the extra ordinary jurisdiction as envisaged under Articles 226 and 227 is not justifiable nor the petitioner has made out any good grounds to entertain the instant petition and interfere in the well considered orders passed by both the authorities.

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