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Court : Karnataka

Decided On : Feb-05-2008

Reported in : 2009(2)KarLJ264; 2008(3)KCCR1511; 2008(5)AIRKarR116; AIR2008NOC2809; 2008AIHC3225(Kar)

Judge : N.K. Patil, J.

Appeal No. : Writ Petition No. 5873 of 2005

Appellant : H.P. Mudlappa

Respondent : The Chief Engineer (Electrical), Bescom and ors.

Advocate for Def. : N.K. Gupta, Adv.

Advocate for Pet/Ap. : M.S. Rajendra Prasad, Adv. and Associates

Disposition : Petition dismissed

Judgement :

ORDER

N.K. Patil, J.

1. The petitioner questioning the correctness of the order dated 30th June, 2003, bearing No. SEE/BC/Appeals/PM-6/NC/324-N31g-15637/381 vide Annexure-L and consequently the draft bill note to the consumer dated 30-10-2002 issued by

respondents 5 and 6 (Vigilance), BESCOM, Bangalore in No. SP/VG/AO/915/2002-03 vide Annexure-H and also the demand notice dated 31-10-2002 issued by the 7th respondent in No. AEEE/N3/AAO/REV/SAII7CR-18.3060-63 vide Annexure-J for payment of Rs. 1,42,590/- to the respondents. Further, he has sought for a direction directing respondents 2 to 7 to refund the payment of Rs. 1,42,590/- and also back billing charges of Rs. 64,538/- which was paid by the petitioner under protest subject to the result of the appeals and writ petitions along with 18% interest thereon from 31-10-2002 till the payment of the said amount by allowing this writ petition with exemplary costs.

2. The petitioner being aggrieved by the back billing demand notice filed an appeal before the Appellate Authority in Case No. N/324/2002 in respect of installation bearing RR No. N3Lg-15637 which was serviced with a sanctioned load of 18.8 kw + 1 HP in the name of the consumer, on the ground that without assigning any reason and without affording any opportunity merely on the basis of the Vigilance report the respondent-AEE/N-3, Sub-Division has issued the back billing demand notice. Therefore, the petitioner was constrained to file an appeal before the First Appellate Authority. The First Appellate Authority in turn after conducting the enquiry and after affording opportunity to the petitioner dismissed the appeal filed by the petitioner and the back billing charges claimed by the respondent-AEE/N-3, Sub-Division vide demand notice dated 31-10-2002 was upheld. Further it was held that the petitioner is liable to pay the same, by order dated 30th June, 2003. Being aggrieved by the impugned order passed by the Appellate Authority and seeking appropriate relief as stated supra, the petitioner herein felt necessitated to present the instant writ petition seeking the appropriate relief.

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

4. After careful evaluation of the material available on record including the impugned demand notice and the order passed by the First Appellate Authority it emerges that the installation belonging to the petitioner situate at Kuvempu Complex, No. 44, 3rd Stage, 2nd Main, 2nd Cross, 3rd Block, Basaveshwaranagar, Bangalore-79, was inspected by the staff of the Vigilance

squad on 29-2-2002 (sic) along with AE(E)/O and MN-3, Sub-Division and has found that the power supply to an extent of 4.5 k.w. was directly connected to the lift by bypassing the meter from the bus bar and thereby the electricity consumed by the appliances was found to have not been recorded in the meter as per the relevant Code. On the basis of the report submitted by the Vigilance Staff, the jurisdictional Competent Authority has issued the back billing demand notice as referred to above. Assailing the correctness of the said back billing demand notice the petitioner filed an appeal before the First Appellate Authority. The petitioner appeared before the First Appellate Authority and specifically contended that he had purchased four passengers traction lift from M/s. Kinetic Elevators, Ahmedabad, Gujarat State for Kuvempu Complex on 19-10-2002 and erected on 24-10-2002. The electrician/worker tested as to whether the erected lift is in operation or not by connecting two wires to the power supply already available to the meter board room. Further, he vehemently contended that back billing charges claimed for a period of six months is baseless, frivolous and vexatious for the simple reason that the lift was received on 19-10-2002, erected between 20th to 24th October, 2002 and the Vigilance Staff inspected the premises on 29-10-2002 (sic). The power supply connected to the lift was to see that whether it is operating properly or not. Therefore back billing charges claimed and issuing demand notice is not proper nor it is sustainable. But he has failed to refer under which provisions of the Regulations it is not permissible to issue back billing notice except making an omnibus statement contending that back billing is baseless and frivolous.

5. After taking into consideration the grounds urged in the memorandum of writ petition and also his submission, the Appellate Authority after critical evaluation of the oral and documentary evidence and other relevant material available on the file has recorded a specific finding holding that except the petitioner making a statement he has not chosen to produce any authenticated documents to substantiate that the lift was erected between 20th to 24th of October, 2002, except producing the receipt issued by the Area Manager dated 5th October, 2002, by issuing the impugned communication on 19th October, 2002 from M/s. Kinetic Elevators before the authority for consideration. The said document produced before the Appellate Authority is not a valid document since no documentary evidence of the Government Agency has been produced while

transporting the lift to his place or the original receipt issued by the Government for having received the full payment. Therefore, the Appellate Authority has not accepted the contention of the consumer/petitioner herein that he has used the lift only 4 days before the date of inspection. Therefore, he denied that the back billing charges so demanded by the authorities is in order and held that the petitioner has not made out any case to interfere with the order. The said reasoning given for dismissing the appeal filed by the petitioner before the Appellate Authority is just and proper. Therefore, I do not find any error muchless material irregularity as such committed by the Appellate Authority in dismissing the appeal.

6. It is significant to note that the petitioner himself has accepted the irregularity so happened thereby the electricity consumed by testing of lift having load of 4.5 k.w. which is not recorded in the meter. When once he has accepted the irregularity and when he has not at all produced any document to establish that he has taken necessary permission for erecting the lift in the complex belonging to him, the finding recorded by the Appellate Authority, that there is theft of electricity is conclusively proved beyond any doubt nor it is the case of the petitioner that at the time of testing period the lift has been erected and tested between 20th to 24th October. He has tested the said lift and at the time of testing the lift, the electricity consumed has not been recorded in the meter and it is not reported. It goes beyond reasonable doubt that the petitioner has intentionally and deliberately committed irregularity and this finding is conclusively proved that the consumption of electricity has not been recorded in the meter. Taking into consideration all the relevant factors into consideration the Appellate Authority has rightly dismissed the appeal. Therefore, I do not find any justification or good ground to interfere with the well-considered order passed by the Appellate Authority nor the petitioner has made out any good ground to entertain the writ petition.

7. In the light of the facts and circumstances of the case as stated above, this writ petition is dismissed as being devoid of merits. Ordered accordingly.

Sri N.K Gupta, learned Standing Counsel for the respondents is permitted to file vakalath on behalf of respondents.

