

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

OP(C) .No. 2602 of 2012 (O)

PETITIONERS:

1. DEPUTY COLLECTOR,
LOWER DIVISION, KERALA STATE ELECTRICITY BOARD
THIRUVANANTHAPURAM
2. THE EXECUTIVE ENGINEER,
KERALA STATE ELECTRICITY BOARD DIVISION
PATHANAMTHITTA

BY ADV. SRI.K.M.SATHYANATHA MENON, SC, KSEB

RESPONDENTS:

1. BHASKARAN NAIR KARUNAKARAN NAIR,
PUTHIYATHU VEEDU, VADASSERIKKARA MURI AND VILLAGE
PATHANAMTHITTA DISTRICT 689662
2. KRISHNAN NAIR PARAMESWARAN NAIR,
THONNHAKADAVIL VEEDU, KOCHUKOICKAL
VADASSERIKKARA MURI AND VILLAGE
PATHANAMTHITTA DISTRICT 689662

R1-R2 BY ADVS. SRI.R.RAJASEKHARAN PILLAI
SMT.SABINA JAYAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 20-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

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PETITIONER(S) EXHIBITS :

- EXT. P1 TRUE COPY OF THE STATEMENT FILED BY THE REVENUE
 INSPECTOR IN E.P NO 185/1997 IN L.A.R. NO 71 OF 1983 ON
 THE FILE OF THE SUB COURT, PATHANAMTHITTA
- EXT. P2 TRUE COPY OF THE APPLICATION FILED BY THE BOARD IN L.A.R
 NO 71/1983 ON THE FILE OF THE SUIB COURT, PATHANAMTHITTA
- EXT. P3 TRUE COPY OF THE STATEMENT OF ACCOUNT FILED BY THE BOARD
 IN L.A.R NO 71/1983 ON THE FILE OF THE SUB COURT,
 PATHANAMTHITTA
- EXT. P4 TRUE COPY OF THE ORDER DATED 13-10-2011 IN E.A NO
 301/2007 IN E.P NO 185/1997 IN L.A.R. NO 71/1983 PASSED
 BY THE SUB COURT, PATHANAMTHITTA

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RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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SUNIL THOMAS, J.

O.P.(C) No. 2602 of 2012

Dated this the 20th day of August, 2015

JUDGMENT

This OP arises from the order of the subordinate judge's court Pathanamthitta, in E.A.No.301/2007, in E.P.No. 185/1997, in L.A.R No.71/1883.

2. The electricity board, who is the petitioner herein, was the judgment debtor in the execution proceedings. E.P was laid by the decree holder, for recovering a sum of Rs.5,41,271.33/-, as seen from the calculation statement of the judgment debtor, Electricity Board. The award of the trial court was challenged in an appeal as L.A.A No.263/1986. As a condition for stay, 50% of the amount quantified at Rs.3,23,025/- was deposited on 15.10.1986. Subsequently, the appeal was dismissed, confirming the award. Thereafter, a sum of Rs.4,57,622/- was deposited on 22.05.1997. The entire amount deposited was withdrawn by the decree holder. Thereafter, the present E.A was filed by the Board, contending that there was an excess payment of Rs.87,572/-, and seeking a direction to the decree holder, to refund the amount with

15% interest. A calculation statement was also filed along with the E.A. The court below by Ext.P4 impugned order, dismissed the application, without accepting the calculation made by the Board. This is challenged in this writ proceeding.

3. Heard Mr. K.M.Sathyath Menon, the learned Standing Counsel for the Board. Examined the records.

4. The Board had submitted a detailed statement of accounts, mentioning the deposits and various calculations made therein and ultimately concluding that, there was an excess payment. The real issue revolved around the mode of appropriation of amount deposited. The contention of the board was essentially based on the decisions reported in **Prem Nath Kapur's case [1996(2) SCC 1971]** as well as in decision reported in **Mathunni Mathai v. State of Kerala [(1998 (I) KLT 813)]**. The court below, however relied on the ratio laid in decisions reported in **Gurupreeth Singh v. Union of India [2006 (8) SCC 457]** and **Collector L.A. v. Jaswanth Singh [2008(4) KLT 142 SC]**.

5. Essentially in the former set of decisions relied on by the Board, the mode of calculation as laid down by the courts was

that on remittance of the amount, it shall firstly appropriated towards the principal amount, and thereafter towards the interest and costs. However, the latter set of decisions laid down the principle that the amount on deposit shall be appropriated towards the interest and costs, and thereafter towards the principal amount. Evidently, the law that prevails is that laid down in the subsequent set of decisions. If that be so, the mode of calculation by the Board cannot be accepted and there appears to be no error in the manner in which the amount was appropriated. The court below has correctly appreciated this fact. It was contended by the learned counsel for the Board that neither the decree holder has objected to the mode of calculation of the Board nor pointed out any error in its calculation and that the court has also not applied its mind as to whether there is any difference in the calculation. However, it appears that the court has considered this aspect also. The statement submitted by the board was available before the court as well as made available to the decree holder . The crucial question revolved around the mode of appropriation alone. Having decided that, the court also arrived at a conclusion that there was a slight

difference in the calculation of interest from 09.07.1981 to 09.07.1982, but ignored it. This eminently showed that the court has applied its mind of that aspect also.

In the above circumstances, I find no reason to interfere with the impugned order, invoking Article 227 of Constitution of India. The OP fails and the same is dismissed.

Sd/-
SUNIL THOMAS, JUDGE

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