

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

WP(C).No. 692 of 2007 (G)

PETITIONER(S):

**MEDICARE HOSPITAL,
NARAKATHARA ROAD, ERNAKULAM,
REPRESENTED BY ITS DIRECTOR DR.GEORGE P.J.**

**BY ADVS.SRI.J.JULIAN XAVIER
SRI.FIROZ K.ROBIN**

RESPONDENT(S):

- 1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVANAM,
PATTOM, THIRUVANANTHAPURAM.**
- 2. DEPUTY CHIEF ENGINEER, APTS,
VYDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM.**
- 3. ASSISTANT EXECUTIVE ENGINEER,
KERALA STATE ELECTRICITY BOARD,
ELECTRICAL MAJOR SECTION COLLEGE, ERNAKULAM.**
- 4. ASSISTANT ENGINEER,
ELECTRICAL SECTION, COLLEGE CLUB ROAD, KOCHI-11.**

**BY ADVS. SMT.P.K.RADHIKA, SC
SRI.JOSE J.MATHEIKEL, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 692 of 2007 (G)

APPENDIX

PETITIONER(S)' EXHIBITS:

**EXT.P1: TRUE COPY OF THE PROCEEDINGS DTD.22.11.1999 OF THE
3RD RESPONDENT.**

EXT.P2: TRUE COPY OF THE APPEAL DTD.29.11.1999.

EXT.P3: TRUE COPY OF THE ORDER DTD.29.11.1999.

**EXT.P4: TRUE COPY OF THE ORDER DTD.4.11.2006 ISSUED BY THE
1ST RESPONDENT.**

**EXT.P5: TRUE COPY OF THE ORDER DTD.23.5.2001 PASSED BY THE CHIEF
ELECTRICAL INSPECTOR IN THE CASE OF MAJ HOSPITAL, EDAPPALLY.**

EXT.P6: TRUE COPY OF THE ORDER DTD.2.2.1999.

EXT.P7: TRUE COPY OF THE ORDER DTD.24.8.1993.

**EXT.P8: TRUE COPY OF THE JUDGMENT IN WRIT APPEAL NO.2124/2004 AND THE
CONNECTED CASE.**

EXT.P9: TRUE COPY OF THE DEMAND DTD.18.12.2006.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.692 of 2007

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Dated this the 6th day of November, 2015

JUDGMENT

The petitioner has approached this Court challenging the alleged detection of the unauthorised load at the hospital premises. The petitioner's contention is that even if there is an additional load, penalty can be only as per Section 42(d) of the Regulations of Conditions of Supply which envisages two separate violations; one in respect of contracted load and other in respect of energy supplied for a specific purpose under a particular tariff.

2. As far as the petitioner is concerned, it is admitted that the alleged misuse is only with respect to contracted load. In such circumstances, the petitioner is liable to pay three times fixed charges for six months on the alleged exceeded contracted load. However, the first respondent by a common order, held that the penalty on energy charges is also applicable. However, it was reduced to two

times by wrongly interpreting the decision of this Court in which the question was considered regarding the retrospectivity of the board order; it is alleged. The petitioner further alleges that they has already remitted 1/3rd of the original demand and now, the fourth respondent is demanding the balance along with duty (duty on penalty) which is illegal. It is with this background, the petitioner has approached this Court.

3. Arguments have been heard.

4. When the matter came up for hearing the learned standing counsel for the respondent electricity board invited my attention to the decision of a Full Bench of this Court in W.A No.2913 of 2009. The short issue considered by the Full Bench was whether the decision of the respondent board on 27.7.2002 has any retrospective operation. The decision was as under:

“Clause 42(d) of Conditions of Supply of electrical energy be modified for relaxation of penalty in the cases of unauthorised additional loads in the manner given below:-

(i) In the case of LT domestic consumers, the penalty for unauthorised additional load shall be ₹50/- per KW per month or part thereof for the additional load till the said unauthorised additional load is removed or regularised as per rules.

(ii) In the case of LT customers other than domestic consumers, the penalty for unauthorised additional load shall be levied at the rate of twice the fixed charges per KW of additional load per month or part thereof till the said unauthorised additional load is removed or regularised as per rules.

(iii) In the case of HT and EHT consumers the penalty for unauthorised additional load shall be levied at the rate of twice the demand charges per KVA for the additional load till the said unauthorised additional load is removed or regularised as per rules.

Adequate publicity be given through the media to regularize additional load to avoid penalty.”

5. It was observed that the power to make regulations without conferring any express power to make regulations retrospectively cannot be treated to read a particular regulation as retrospective.

6. The question to be considered in this case is whether penalty could be imposed on energy charges in addition to the fixed charges. There were divergent views in the matter and this was finally settled

by the Full Bench decision referred to above. Now, the question is whether the petitioner would be saddled with the liability to pay interest only from 29.10.2004. I was given to understand that the normal interest levied in case of One Time Settlement is 6%.

Therefore, the writ petition is disposed of permitting the petitioner to clear off the entire arrears, excluding the amount already paid as per the interim order dated 5.1.2007, together with interest @ 6% per annum, within a period of two months from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

krj

//true copy//

P.A to Judge