

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

RFA.No. 349 of 2003

**OS 245/1996 OF ADDITIONAL SUB COURT, THIRUVANANTHAPURAM,
DATED 15-11-2001**

APPELLANT(S)/PLAINTIFF:

**BIJU RAMESH, S/O.G.RAMESAN,
SAMTHRIPTI, RAJADHANI BUILDINGS,
THIRUVANANTHAPURAM.**

**BY ADVS.DR.K.P.SATHEESAN (SR.)
SRI.M.R.JAYAPRASAD
SRI.P.MOHANDAS (ERNAKULAM)
SRI.ANOOP.V.NAIR
SRI.S.VIBHEESHANAN
SRI.N.MANU THAMPI**

RESPONDENT(S)/DEFENDANTS:

- 1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VAIDYUTHI BHAVAN,
PATTOM, THIRUVANANTHAPURAM.**
- 2. THE ASSISTANT EXECUTIVE ENGINEER,
KERALA STATE ELECTRICITY BOARD,
ELECTRICAL MAJOR SECTION, THYCAUD,
THIRUVANANTHAPURAM.**

**BY ADV. SRI.P.SANTHALINGAM (SR.)
BY ADV. SRI.N.D.PREMACHANDRAN, SC
BY ADV. SRI.S.SHARAN,SC**

**THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 25-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

P.B.SURESH KUMAR, J.

R.F.A.No.349 of 2003

Dated this the 4th day of August, 2015

JUDGMENT

The plaintiff in a suit for injunction is the appellant. The plaintiff is running a hotel. There was an inspection in the premises of the hotel of the plaintiff. Based on the report of the said inspection, an additional invoice was raised against the plaintiff by the first respondent, Kerala State Electricity Board ('the Board' for short), claiming a sum of Rs.95,982/-. According to the plaintiff, he has been paying regularly the invoices raised by the Board against his establishment and therefore, the additional invoice served on him is unsustainable. He, therefore, claimed a decree of permanent prohibitory injunction restraining the Board from disconnecting the

power supply to his premises for non payment of the amount covered by the additional invoice.

2. The Board filed a written statement, contending among others, that the load sanctioned to the plaintiff for his hotel is only 12 KW and that he was found using 38 KW at the time of the inspection. According to the Board, the conduct of the plaintiff in exceeding the sanctioned load amounts to misuse of energy as provided for in clause 42 of the Conditions of Supply of Electrical Energy framed by the Board and that as per the terms of the Conditions of Supply of Electrical Energy, the Board is entitled to raise additional invoice for the additional load connected in the establishment at three times the rate applicable to the respective tariff for the previous six months. The case of the Board, therefore, was that the additional invoice served on the plaintiff represents the amount payable by the plaintiff in accordance with the

provisions contained in Clause 42(d) of Conditions of Supply of Electrical Energy.

3. The trial court accepted the case of the defendants and dismissed the suit. The plaintiff is aggrieved by the said decision of the trial court.

4. On behalf of the plaintiff, his Manager gave evidence as PW1. PW1 has no case in his evidence as to the sanctioned load in the premises and the connected load. The Sub Engineer of the Board, who inspected the premises of the plaintiff on 11.1.1996 gave evidence to the effect that at the time of inspection, the connected load of the establishment was 38 KW and that the sanctioned load was only 12 KW. He also stated that the additional invoice was raised, in the circumstances, in accordance with the provisions contained in the Conditions of Supply of Electrical Energy.

5. Condition 42 of the Conditions of Supply of

Electrical Energy reads thus:

"42. Misuse of Energy

(a) The consumer shall not keep connected to Board's supply system any apparatus which the Board deems to interfere with or affect supply injuriously to other consumers. .

(b) Consumers availing three phase supply should keep their load balanced. The maximum difference in current in any two phases should not be more than 5%.

(c) The consumer shall not make such use of the supply given to him by the Board as to act prejudicially to the Board in any manner whatsoever.

(d) If the consumer exceeds the contracted load without prior permission of the Board or energy supplied for a specific purpose under a particular tariff is used without the Board's knowledge and approval for a different purpose not contemplated in the contract for supply and for which higher tariff is applicable coming under misuse of energy within the meaning of the I.E. Act.1910. Misuse of energy will be billed at three times the rate applicable to the respective tariff for the previous six months from the date of detection of misuse unless there are convincing reasons for adopting different periods and supply disconnected without notice. The imposition of this higher rate will not relieve the consumer from any penalties imposed by law.

(e) if at any time the consumer exceeds his contracted load without prior permission of the Board, the Board has the right to disconnect the supply and recover the damages caused, if any, from him on account of his exceeding the contract load."

It is clear from the above condition that if a consumer

exceeds the contracted load without prior permission of the Board, the Board is entitled to treat the said conduct of the consumer as a misuse of energy and is entitled to raise additional bill at three times the rate applicable to the respective tariff. The plaintiff has no case that the additional bill raised on him is not prepared in accordance with Condition 42 of the Conditions of Supply of Electrical Energy.

6. The learned counsel for the appellant contended that the appellant has been paying regularly electricity charges at the tariff applicable to the establishments availing connected load exceeding 10 KW and therefore, there was no necessity at all for the Board to raise the additional invoice which is the subject matter of the suit. It is beyond dispute that the Board is raising invoices not only for the electrical energy consumed in the premises, but also fixed charges for the connected load. In

so far the plaintiff has not been paying fixed charges for the connected load of 38 KW, there is absolutely no basis for the said contention. The appeal is, therefore, devoid of merits and the same is, accordingly, dismissed.

7. The learned counsel for the appellant submits that he has been enjoying an order of temporary injunction right from the year 1996 and as such, the amount covered by the additional bill has not been paid till date. In the light of the said submission of the learned counsel for the appellant, I deem it appropriate to permit the appellant to pay the pending dues in twelve monthly instalments commencing from 01.10.2015.

P.B.SURESH KUMAR, JUDGE.

smm