

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

WP(C).No. 151 of 2013 (T)

PETITIONER(S):

**C.M.C.ST. JOSEPH'S PROVINCE, THALASSERY
REP. BY ITS PROVINCIAL SUPERIOR NELLIKKAMPOIL
ULIKKAL P.O., KANNUR DT.**

BY ADV. SRI.P.NARAYANAN

RESPONDENTS:

- 1. KERALA STATE ELECTRICITY BOARD
REP. BY IT'S SECRETARY, VYDHUTHI BHAVAN, POTTAM
THIRUVANANTHAPURAM, PIN - 695 001.**
- 2. THE ASST. ENGINEER
ELECTRICAL MAJOR SECTION, TALIPARAMBA, PIN 670 101**
- 3. KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM
REP. BY ITS SECRETARY PIN - 695 001.**

R BY SRI.SAJEEVKUMAR K.GOPAL, SC, KSEB

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1: TRUE COPY OF the REGISTRATION CERTIFICATE AND THE MEMORANDUM OF ASSOCIATION OF THE PETITIONER.
- EXT.P2: TRUE COPY OF THE SALE DEEP NO.1503/2002 OF TALIPARAMBA SRO.
- EXT.P3: TRUE COPIES OF ELECTRICITY BILLS ISSUED TO THE PETITIONER'S INSTITUTION CHARGING ELECTRICITY UNDER LT VIA TARIFF IN THE YEARS 2010, 2011 AND 2012.
- EXT.P4: TRUE COPY OF THE RELEVANT PAGES OF THE SCHEDULE OF TARIFF AND TERMS AND CONDITIONS FOR RETAIL SUPPLY BY KSEB WITH EFFECT FROM 1/12/2007 ISSUED BY THE 3RD RESPONDENT.
- EXT.P5: TRUE COPY OF THE BILL DATED 7/12/2012 FOR AN AMOUNT OF RS.12,223/- ISSUED TO THE PETITIONER.

RESPONDENTS' EXHIBITS **NIL**

//TRUE COPY//

PA TO JUDGE

ANIL K.NARENDRAN, J.

W.P.(C).No.151 OF 2013

Dated this the 20th day of March, 2015

J U D G M E N T

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The petitioner is the Provincial Superior of C.M.C. St. Joseph's province which is a charitable society. The institution is having an electricity connection with Consumer No.7393 coming under the KSEB Electrical Section, Thaliparamba. On implementation of Ext.P4 Schedule of Tariff and Terms and Conditions for Retail Supply by KSEB, issued by the Kerala State Electricity Regulatory Commission, which came into force with effect from 1/12/2007, the petitioner's educational institution was classified under LT-VIIA commercial tariff, from LT-VIA tariff and the petitioner was issued with Ext.P5 demand notice dated 7.12.2012. It is aggrieved by Ext.P4 to the extent of classifying the self-financing educational institutions under LT-VIIA tariff and for other consequential reliefs the petitioner has approached this Court in this Writ Petition.

2. By order dated 2.1.2013, this Court passed the following interim order:

“There will be an interim stay of recovery of the amounts demanded under Ext.P5 notice until further orders. I however make it clear that the petitioner is liable to pay tariff for the future period as per LT VIA of course subject to the result of the Writ Petition. I pass this interim order taking note of the judgment dated 08.11.2012 in W.P.(C) No.26041/2012.”

3. The question involved in this Writ Petition is as to whether private self-financing educational institutions are liable to be charged under LT-VIIA tariff, in distinction with private aided educational institutions, which are charged under LT-VIA tariff. The issue stands settled in favour of the petitioner, as per a Division Bench decision of this Court in **Bro. Joseph Antony Vs. K.S.E.B (2009 (3) KLT 1022)**. It is brought to my notice that, the above decision is under challenge before the Apex Court in various Special Leave Petitions filed by the KSEB, and the Apex Court had stayed operation of the said judgment. However, unless the legal

position is reversed, this Court is bound to follow the decision in **Bro. Joseph Antony's case (supra)**, in view of the principle laid down by this Court in **Abdu Rehiman Vs. District Collector, Malappuram (2009 (4) KLT 485)**.

4. The further challenge in this Writ Petition is against Ext.P5 demand notice whereby the petitioner was requested to make payment of arrears of electricity charges at enhanced rate, i.e., under LT-VIIA tariff. The question regarding liability of the petitioner for payment at enhanced rate will depend upon outcome of the decision of the Apex Court. In view of the stay granted by the Apex Court, I am not inclined to restrain the respondent Board from charging the petitioner under the enhanced tariff. This is because of the fact that, if ultimately the Apex Court upholds the change of tariff, the respondent Board will be put to prejudice. On the other hand, the petitioner can seek refund/adjustment if the decision is ultimately in favour of the consumers. But it is only just and proper to restrain the respondent Board from recovering the

arrears on the basis of the enhanced tariff, till the matter is ultimately decided by the Apex Court.

5. Therefore this Writ Petition is disposed of directing the respondents to keep in abeyance recovery of arrears demanded under Ext.P5 notice till ultimate decision is rendered by the Apex Court in the SLPs referred above. It is made clear that the respondents are free to charge the petitioner under LT VIIA tariff for continued consumption of energy. It is made clear that payments made under the enhanced tariff will be liable to be refunded/adjusted in case the Apex Court upholds the judgment in **Bro. Joseph Antony's case (supra)**. It is also made clear that the respondents will be entitled to recover the arrears, if the change of tariff is ultimately upheld by the Apex Court.

This Writ Petition is disposed of as above. No order as to costs.

sd/-

**ANIL K.NARENDHAN, JUDGE**

ps/24/3/2015