

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

WA.No.1099 of 2015
IN WP(C).30804/2010

AGAINST THE JUDGMENT IN WP(C) 30804/2010 of HIGH COURT OF KERALA
DATED 13-02-2014

APPELLANT/APPELLANT:

ESSAR TELECOM INFRASTRUCTURE (PVT) LTD.
(NOW KNOWN AS ATC TELECOM TOWER CORPORATION PRIVATE LTD)
36/2624, SHENOY ROAD, KALOOR ERNAKULAM 683017
REPRERSENTED BY THEIR ASSISTANT
MANAGER(LEGAL)MR.BABU PATTATHANAM

BY ADVS. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM

RESPONDENTS/RESPONDENTS:

1. KERALA STATE ELECTRICITY BOARD
PATTOM P O, THIRUVANANTHAPURAM
REPRESENTED BY ITS SECRETARY 695004
2. THE EXECUTIVE ENGINEER
KERALA STATE ELECTRICITY BOARD, ELECTRICAL DIVISION
THIRUVALLA 689102
3. THE ASSISTANT ENGINEER
KERALA STATE ELECTRICITY BOARD ELECTRICAL SECTION
MANIPUZHA, KAVUMBHAGOM P O, THIRUVALLA 689102.

R1-R3 BY ADV. SRI.PULIKOOL ABUBACKER, SC, KSEB

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
08-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P. R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.**

W. A. No.1099 of 2015

Dated this the 8th day of June, 2015

JUDGMENT

P. R. Ramachandra Menon, J.

The correctness and sustainability of the judgment dated 13/02/2014 passed by the learned single Judge, whereby interference was declined as to the grievance projected with regard to the alleged extent of consumption of energy as per Exts.P3 and P4 bills issued by the KSEB, is under challenge in this appeal.

2. Sequents of events borne out by the records show that the appellant herein who is engaged in providing passive infrastructure facilities for mobile service providers, had installed a telecommunication tower at the concerned spot. Since there were frequent complaints of voltage dip, it was found fit and proper to have the facility of a diesel generator. Accordingly, the appellant obtained Ext.P1

sanction from the Electrical Inspector to install a diesel generator of 25 KVA and the same was energised. In due course, the energy level came down, which according to the appellant, was because of the consumption of lesser energy, making use of the diesel generator. According to the Department/respondent Board, it was because of the fault of the meter, which was noticed when inspection was conducted by the authorities of the Board who replaced the meter, allegedly on the basis of an oral complaint of the appellant. Subsequently, disputed bills were raised on the basis of the average energy consumed for the past 'six months', in compliance with the statutory provisions. This made the appellant to prefer Ext.P5 complaint before the third respondent disputing the course pursued by the Board; mainly contending that there was absolutely no fault with the meter and that the third respondent had removed the meter without notice and consent and further that, there was absolutely no basis for having calculated the energy on the basis of average consumption for the past six months,

on the pretext that the meter was defective, when there was substantial fall in the energy consumption by virtue of installation of 25 KVA diesel generator. Ext.P5 complaint was rejected by the third respondent vide Ext.P7 reply. This made the appellant to approach this Court by filing the writ petition. After hearing both the sides and considering the nature of pleadings raised by the Board, interference was declined and the writ petition was dismissed. It was also observed that, though the Board had taken a stand that the meter was still in the safe custody and the same could be got tested by the appellant/writ petitioner by remitting the requisite fees, if he was aggrieved, the appellant/petitioner had not availed the said opportunity.

3. Heard the learned counsel for the appellant and the learned Standing Counsel for the respondent Board at length.

4. Learned counsel for the appellant points out that a dispute was raised by the appellant by submitting Ext.P5 on issuance of Exts.P3 and P4 bills. The said issue was to be

considered by none other than the second respondent, who was the competent authority, as it is not a case of arithmetical error. Specific reference is made to Regulation No.37 of the Kerala State Electricity Board Terms and Conditions of Supply, 2005 which reads as follows:-

“37. Disputes in Bill. - (1) Any complaint with regard to the accuracy of the electricity bill shall be made in writing to the officer who has issued them. Arithmetical mistakes on the face of the bill shall be corrected and revised demand issued by the officers who issued the bill. In all other cases, any correction or revision of demand shall be done only by the officers not below the rank of Executive Engineers in respect of L.T. consumers and Deputy Chief Engineer in respect of HT/EHT consumers. The correction or revision of the demand shall be made only after ascertaining the bona fides of the complaint. However, the bill should be paid on or before the due date originally fixed, and adjustment, if any, will be made only in the subsequent bills. The amount so paid will be regarded as advance to the credit of the consumer's account until such time as the invoices in dispute are fully settled.

(2) On a complaint by any consumer regarding the correctness of a bill, the Board will immediately carry out a review. The Board will issue a revised bill and appropriately adjust the bill amount, if the review establishes that the bill is incorrect. If in the review it was found that the consumer was overcharged, the excess amount

shall be repaid within two months with interest at twice the bank rate.

(3) While issuing a revised bill the Board will specify the amount to be recovered as a separate item in the consumer's next bill with details or as a separate bill with details for the amount.

(4) While communicating the decision on the review of the bill, the Board will advise the consumer in writing his right to prefer an application against the decision of the Board to Consumer Grievances Redressal Forum (CGRF) and further to appeal to the Ombudsman if required.

(5) If the Board establishes that it has undercharged the consumer either by review or otherwise, the Board may recover the amount undercharged from the consumer by issuing a bill and in such cases at least 30 days shall be given for the consumer to make payment against the bill. While issuing the bill, the Board will specify the amount to be recovered as a separate item in the subsequent bill or as a separate bill with an explanation on this account.

(6) If it is established that after payment of the bill, the Board has overcharged the consumer, the excess amount shall be repaid within two months with interest at twice the bank rate."

On going through the said provisions, this Court finds that the proper course which should have been followed was to have the matter forwarded to the second respondent for

consideration; as the grievance was not with regard to arithmetical error. Non-compliance of the instructions/directions issued by the authorities of the Board led to disconnection. The version of the respondent Board, as it appears from paragraphs 3 and 4 of the counter affidavit, is in the following terms:-

“3. It is respectfully submitted that the petitioner is being billed on monthly basis under LT VII(a) tariff with authorized load of 15 KW and unauthorized load of 5KW. At the time of taking the energy meter reading during 8/2010 the consumption was found to be only 2541 units low consumption, when compared with the previous months consumption. Based on the low consumption and as per the request from the petitioner, the energy meter of the consumer was inspected by the officials of the K.S.E.Board and found that the impulse/kwh indicator is not functioning. Further, no comparison/calibration was possible because of the non-functioning of the fundamental impulses/kwh indication of the energy meter. The energy meter was declared as suspected faulty and bill had been served to the consumer on 6-9-2010 based on an average consumption of 5303 units (System calculated average consumption) after replacing the faulty meter. The consumer approached with an objection for the bill dated 6-9-2010 and reply for the objection had been served to the consumer by registered post as well as in person at the consumers premises stated that modification

would be possible for the bill amount based on the testing report of the faulty energy meter at the consumer's risk and cost. But the consumer had neither turned up for testing of the energy meter nor paid the bill amount. Subsequently bill for the month of 9/2010 amounting to Rs.1,19,293/- had been served to the consumer which includes the previous month dues. The disconnection of supply to the consumer had been effected due to the non-payment of current charges for the month 8/2010.

4. It is respectfully submitted that on 14-9-2010, the consumer paid the Additional Cash Deposit amount of Rs.87,056/-. Meanwhile, another bill had been issued for the consumption during 9/2010 on 5-10-2010. This Honourable Court has directed to effect reconnection on conditional payment of Rs.75,000/- and reconnection charges. The consumer remitted the same on 19-10-2010 and reconnection effected on the same day itself. But the consumer did not pay the current charges of Rs.56,750/- mentioned in the bill dated 5-10-2010 which was not under challenge in this writ petition. Hence, disconnection effected after informing the consumer's representatives at his premises."

Learned counsel for the appellant submits that, pursuant to satisfaction of the entire amount as demanded by the Board, reconnection has been effected. But the grievance of the appellant still stands, as the course pursued by the third respondent is contrary to Regulation No.37 of the Kerala

State Electricity Board Terms and Conditions of Supply, 2005.

5. After hearing both the sides, this Court finds that the competent authority who should have considered the matter with reference to the nature of the grievance projected herein, was the second respondent and as such, this Court finds it necessary to have the matter considered by the second respondent. Accordingly, there will be a direction to the third respondent to forward the proceedings to the second respondent forthwith, at any rate, within 'two weeks' from the date of receipt of a copy of this judgment. Upon receipt of the same, it shall be considered by the second respondent and appropriate orders shall be passed in accordance with law, after affording an opportunity of being heard to the appellant, within 'two months' from the date of receipt of the proceedings from the third respondent as mentioned above. It is made clear that the second respondent will be at liberty to examine, analyse, and appreciate the nature and extent of grievance with

reference to the course and conduct of the appellant, particularly with regard to the quantum of energy which was being consumed earlier, and also in respect of the subsequent period, ascertaining the actual facts and figures.

This writ appeal is disposed of accordingly.

Sd/-
P. R. RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

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P.A. TO JUDGE