

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

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WA.No. 1240 of 2015 () IN WP(C).9957/2008

(AGAINST THE ORDER/JUDGMENT IN WP(C) 9957/2008 of HIGH COURT
OF KERALA DATED 26.05.2015)

APPELLANT(S)/APPELLANT/PETITIONER:

M/S. VASANTH CLOTH STORES,
KOZHINJAPARA
REPRESENTED BY ITS PROPRIETOR C.HARIDAS, (DIED)
REPRESENTED BY THE LEGAL HEIRS SRI.VASANTHAKUMAR.H.

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

RESPONDENT(S)/RESPONDENTS/RESPONDENTS:

1. KERALA STATE ELECTRICITY BOARD,
RPERESENTED BY ITS SECRETARY, VYDYUTHI BHAVANAM
PATTOM, THIRUVANANTHAPURAM, PIN-695004.

2. THE DEPUTY CHIEF ENGINEER,
(APPELLATE AUTHORITY UNDER SECTION 127 OF THE ELECTRICITY ACT)
ELECTRICAL CIRCLE, PALAKKAD.

3. ASSISTANT ENGINEER,
ELECTRICAL SECTION, KOZHINJAMPARA.

4. ANTI POWER THEFT SQUAD,Q
KERALA ELECTRICITY BOARD, PALAKKAD UNIT, PALAKKAD.

BY ADV. SRI.P.SANTHALINGAM (SR.)
BY ADV. SRI.S.SHARAN,SC,K.S.E.BOARD

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 25-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

.....
W.A.No.1240 OF 2015
.....

Dated this the 25th June, 2015

J U D G M E N T

P.R.Ramachandra Menon, J:

Correctness and sustainability of fixation of liability particularly the penalty imposed under Section 135 of the Electricity Act and confirmation of the same by way of appeal under Section 127; which stands affirmed by the learned single Judge in W.P.(C) 9957 of 2008, forms the subject matter of challenge in this appeal.

2. The sequence of events reveals that the appellant was running a shop in the premises with consumer number 304, with installation of 20 Electric Tubes of 40 Watts, 11 Bulbs of 660 watts, 4 spot lights of 150 watts and 8 fans of 60 watts (total of 2540 Watts). According to the appellant, the consumption was only very limited, somewhere around 200 or 220 watts and that the bills being raised by the Board in turn were satisfied then and there. It is alleged that, because of some ill-will and

personal animosity of some officers of the Board, the petitioner was sought to be harassed and the premises were inspected by the 'APTS' on 24.01.2008 and a Mahazar was prepared, a copy of which has been produced as Ext.P8. The meter reading on that day was 7430.70 . It was also observed that the last bill was served to the appellant on 22.01.2008; and going by the reading taken on that day(i.e on 24.01.2008), the difference noted was nearly 110 units, which was stated as consumed within a short span of 'two days'.

3. Referring to the tampering of the meter noted by the squad, it was observed that there was possibility for having consumed much energy by dubious means and it was open for the appellant to have the meter reset, so as to show only lesser consumption. In the said circumstance, a provisional bill was raised as Ext.P5, imposing penalty to the tune of Rs.96681.29/- taking the entire installed load as 2.54 Kwts, reckoning 10 hours consumption per day and 25 days per month. The petitioner filed a detailed statement of objections, but the same did not turn to be fruitful and the proceedings were finalised as

per Ext.P9(a) confining the figures in the provisional bill. Being aggrieved of the order passed by the assessing authority, the petitioner pursued statutory remedy by way of appeal under Section 127 of the Act, wherein no interference was made and the same was rejected by Ext.P11 order by the appellate authority . This made the petitioner to approach this court by filing writ petition.

4. After hearing both the sides , interference was declined by the learned single Judge, observing that there was a fact adjudication at two different levels and that mutilation of the meter was very much discernible from the proceedings . There is also an observation in paragraph 2 of the verdict that the meter showed consumption of '110 units' since the date of last spot billing (i.e. 22.01.2008..) It was in the said circumstance, that the penalty fixed upon the appellant/ petitioner was found to be correct. However, the writ petitioner was permitted to clear the liability by way of three Equal monthly installments, beginning from 15.06.2015; simultaneously intercepting the coercive proceedings as mentioned therein. It is challenging

the said verdict that the petitioner/appellant has approached this Court by filing this appeal raising various grounds.

5. When the matter came up for consideration before this Court on the last occasion, discrepancies borne out from the records were put across the learned Sr. Counsel for the Board, who sought for time to ascertain the position; particularly as to whether the unit could have consumed '110 watts' within 'two days' with the given installation. Accordingly, a counter affidavit has been filed on behalf of the respondents, also producing two additional documents as Exts.R3(a) and (b).

6. Heard both sides in detail. It is seen that the squad very much noted tampering of the meter and other incriminating circumstances, as evident from Ext.P8 Mahazar. The quantum of penalty was fixed in respect of the 'deemed consumption' of energy, taking the base as '110 units' stated as consumed within 'two' days, i.e. from the last date of spot billing (22/01/2008) and the date of inspection by the squad (24/01/2008). The specific contention of the appellant is that on 22.01.2008, the shop was lying closed down, as it was a

W.A.No.1240 OF 2015

5

'Tuesday' which was a weekly holiday for the establishment. The said fact which was asserted on the last occasion as well, is not seen rebutted in the counter affidavit filed by the respondents. That apart, the readings in respect of the consumer number 304 for the different months/ billing period are discernible from the documents produced , which are given below in a tabulated form for convenience of reference.

<i>Date of bill</i>	<i>Previous reading</i>	<i>Present reading</i>	<i>Unit consumption</i>	<i>Amount (Rs.)</i>	<i>Remark</i>
20.01.2007	5821	6029	208	1600	Ext.P1(d)
17.03.2007	6029	6195	166	1215	Ext.P1(c)
15.05.2007	6195	6401	206	1590	Ext. P1(b)
23.07.2007	6401	6628	227	1731	Ext.P1(a)
22.09.2007	6628	6857	229	1744	Ext.P1
17.11.2007	6857	7096	239	1810	Ext.R1(a)
22.01.2008	7096	(Door locked)	224 (roughly	1711	Ext.P2
24.01.2008	7320	7430	110		Ext.P8 Mahazar.....
21.02.2008	7096 as on 17.11.2007	7430 as on 24.01.2008	334	96681.29	Ext.P9(a)

7. From the above, it is very much evident that, since the door of the unit was lying locked on the date of last spot billing on 22.01.2008, as per Ext.P2, consumption of energy was roughly worked out with reference to the previous consumption and the same was fixed as '**224' units**. It was added to the previous reading of '7096', (which was recorded on 17.11.2007) as per Ext.R1(a)bill. When this much of quantum is reduced from the meter reading noted on the date of squad inspection held on 24.01.2008 (7430.70), the resultant figure is only **334**. It means that this much energy alone was used by the consumer for the period from **11th November 2007 to 24th January, 2008** as given in ExtP9(a) bill itself. If this be the position, the entire calculation effected by the authorities of the Board requires to be re-considered and re-worked, to assess the actual quantum of penalty to be satisfied by the petitioner, if at all any misuse of energy /tampering of the meter was actually involved.

8. In the above circumstance, this Court finds that the proceedings finalised by the assessing authority/appellate

authority are not correct or sustainable and the correct factual position was unfortunately omitted to be noted by the learned single Judge as well . In the above circumstance, this Court sets aside Ext.P9, Ext.P9(a), Ext.P11 and also the verdict passed by the learned single judge in the writ petition. The respondents are directed to reconsider the matter in the light of the above observations, with reference to all the relevant materials and to fix the liability if any, in accordance with law, after affording an opportunity of hearing to the appellant, at the earliest, at any rate, within six weeks from the date of receipt of a copy of the judgment.

'Status quo' will continue till such time.

**P.R. RAMACHANDRA MENON,
JUDGE.**

**BABU MATHEW P. JOSEPH,
JUDGE.**