

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

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

WA.No. 1338 of 2015 () IN WP(C).33182/2009

AGAINST THE ORDER/JUDGMENT IN WP(C) 33182/2009 of HIGH COURT OF KERALA
DATED 05-06-2015

APPELLANT(S)/APPELLANT/PETITIONER IN WPC NO. 33182/2009:

SHIBULAL S.D. AGED 49 YEARS
S/O. DAS, SREE LAKSHMI HOUSE, KARUVATTA VILLAGE
KARTHIKAPPALLY TALUK, ALAPPUZHA DISTRICT.

BY ADVS.SRI.S.SHANAVAS KHAN
SMT.S.INDU

RESPONDENT(S)/RESPONDENTS/RESPONDENTS IN WPC NO. 33182/2009:

1. THE KERALA STATE ELECTRICITY BOARD
REPRESENTED BY ITS CHAIRMAN, VYDYUTHI BHAVAN, PATTOM
THIRUVANANTHAPURAM-695001.

2. THE DEPUTY CHIEF ENGINEER
ANTI-POWER THEFT SQUAD (APTS), ELECTRICAL CIRCLE
ALAPPUZHA-688001.

3. THE ASSISTANT ENGINEER
ELECTRICAL SECTION, KARUVATTA-690517.

4. THE SUB ENGINEER
ELECTRICAL SECTION, KARUVATTA-690517.

R1-R4 BY ADV. SMT.P.K.RADHIKA-KSEB

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 26-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

~~~~~

W.A. No. 1338 of 2015

~~~~~

Dated, this the 26th day of June, 2015

JUDGMENT

Ramachandra Menon, J.

Finalization of the penalty imposed upon the petitioner, who is a consumer of the Electricity Board and has availed two separate connections viz consumer No 8855 [for running an industry] and consumer No 9155 [for domestic purpose] is under challenge in this appeal.

2. The petitioner is the proprietor of Sree Lakshmi Distributors, which is an SSI unit engaged in manufacturing of 'Sip Ups' and 'Ice Creams'. Consumer No. 8855 is an LT IV connection availed by the petitioner for industrial purpose. The petitioner's establishment is stated as running on loss. The building situated in the nearby premises is having domestic electric connection with consumer No. 9155. It is stated that the brother of the petitioner is conducting a shop in the nearby building with the consumer No. 7784.

3. In the course of operation of the petitioner's unit as above, it was felt that there was some difficulty with regard to the power

meters, which was brought to the notice of the authorities of the Board; pursuant to which, the power meter was replaced after the inspection conducted on 22.10.2005. Subsequently, there was another inspection by the APTS team on 25.05.2006, whereby some incriminating circumstances were stated as unearthed; the particulars of which are discernible from Ext.P4 mahazar. Admittedly, the mahazar has been signed by the petitioner and some other witnesses as well. After considering the objections preferred by the petitioner, in response to the provisional bill, the proceedings were finalized and a demand notice vide Ext. P6 was issued, requiring the petitioner to satisfy a sum of Rs. 48349/-. Being aggrieved of the proceedings, the appellant preferred an appeal before the appellate authority/second respondent herein. The matter was finally heard, but without serving a copy of the order, coercive proceedings were pursued by the respondents, which hence was sought to be challenged by filing W.P.(C) No. 16214 of 2009.

4. The above writ petition was disposed of as per Ext. P12 judgment observing that no proof was produced from the part of the Board to establish the fact that copy of the appellate order was

served to the consumer. Accordingly, the writ petition was disposed of, directing the concerned respondent to serve a copy of the appellate order, to enable the appellant to pursue other remedies, if any. For facilitating the said exercise, the coercive proceedings were ordered to be kept in abeyance for a period of one month. It was accordingly, that the petitioner was served with Ext. P13 order dated 31.07.2008. The petitioner approached this Court again by filing the writ petition No. 33182 of 2009, challenging the order on various counts. The matter was considered by a learned single Judge of this Court, who found that there was no merit to call for interference, in view of the materials brought on record. Accordingly, interference was declined, however enabling the writ petitioner to satisfy the liability by way of 'three' equal monthly installments; the first of which is to be effected on or before 30.06.2015. The correctness of the said verdict is under challenge in this writ appeal.

5. Heard the learned counsel for the appellant as well as the learned standing counsel for the respondents.

6. During the course of hearing, the learned counsel for the appellant submits that the vital aspects as disclosed from the

proceedings, particularly the mahazar, have not been properly adverted to by the learned single Judge, while declining interference. It is stated that, the connection bearing No. '7784' was actually given to the premises of the brother and that there is absolutely no basis for the observation or inference to the effect that power was drawn by the petitioner from the said connection. Admittedly, there were three connections and the petitioner is concerned with consumer No. 8855 [with respect to industry] and consumer No. 9155 [domestic connection]. On going through the contents of the mahazar and the proceedings forming part of the record, particularly the order passed by the second respondent, it is seen that tampering is noted with respect to the light meter under consumer No. '8855'. It is also borne out by records, that a pick up van fitted with a 'freezer', was lying parked behind the residential building; to which power supply was given under consumer No. 9155 and the freezer was found charged from the said connection at the time of inspection. There is absolutely no plausible explanation from the part of the appellant with regard to the above two insinuations. This aspect was considered by the assessing authority, appellate authority and the learned single

Judge of this Court. The fact adjudication has taken place at different levels. This Court does not find any tenable ground to interfere with the findings of the learned single Judge. Interference is declined and the writ appeal is dismissed.

Considering the persuasive submission made by the learned counsel for the appellant, for satisfying the first installment, we grant extension by two weeks.

sd/-

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

sd/-

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

kmd