

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

WA.No. 1776 of 2014 () IN WP(C).12667/2009

AGAINST THE ORDER/JUDGMENT IN WP(C) 12667/2009 of HIGH COURT OF KERALA
DATED 04-02-2014

APPELLANT:

M.CHEMPAKAMUTHU
MANAGING PARTNER
REPRESENTING THASLEEJ ICE AND COLD STORAGE
KALLEKKAD PO, SHORNUR ROAD, PALAKKAD.

BY ADVS.SRI.K.RAMAKUMAR (SR.)
SRI.M.RAJENDRAKUMAR
SRI.S.M.PRASANTH
SRI.C.DINESH
SMT.ASHA BABU
SMT.AMMU CHARLES
SRI.G.RENJITH
SMT.JINNU SARA GEORGE

RESPONDENT(S)/RESPONDENTS:

1. KERALA STATE ELECTRICITY BOARD
REPRESENTED BY ITS SECRETARY, VAIDHYUTHI BHAVAN
PATTOM, THIRUVANANTHAPURAM-695 004.

2. THE DEPUTY CHIEF ENGINEER
K.S.E.B, DIVISIONAL OFFICE, PALAKKAD-678 001.

3. THE EXECUTIVE ENGINEER
K.S.E.B, DIVISIONAL OFFICE, PALAKKAD-678 001.

4. THE ASSISTANT ENGINEER
K.S.E.B, PARALI SECTION, PARALI, PALAKKAD.

5. THE SECRETARY
KERALA STATE ELECTRICITY TARIFF REGULATORY COMMISSION
THIRUVANANTHAPURAM-695 001.

6. STATE OF KERALA,
REPRESENTED BY THE SECRETARY
DEPARTMENT OF ELECTRICITY
THIRUVANANTHAPURAM-695 001.

R1-R4 BY ADV. SRI.P.SANTHALINGAM (SR.)
R1-R4 BY ADV. SRI.S.SHARAN,SC,K.S.E.BOARD
R BY GOVERNMENT PLEADER
R BY SRI.S.SUJIN
R BY SRI.JAICE JACOB,SC,KERALA STATE ELECTRICITY BOARD

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 18-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

K. RAMAKRISHNAN, JJ.

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W.A No. 1776 of 2014

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Dated, this the 18th day of June, 2015

JUDGMENT

Ramachandra Menon, J.

The writ petitioner is the appellant. Challenge is in respect of the observation made by the learned single Judge in the final verdict passed on 04.02.2014, to the effect that there is no illegality in the levy of charges on the petitioner at the LT VII(A) Tariff rate, while disposing of the writ petition in terms of the interim order dated 30.04.2009..

2. The appellant is the Managing Partner of a firm, who was conducting a cold storage and an ice factory with two different consumer numbers (5553 and 6793) and with two separate door numbers. Earlier, due to various adverse circumstances, the ice factory had to be shut down. Subsequently, the old partners of the firm handed over the ice factory to a new set of partners and steps were taken to have the unit revived. The entire arrears payable to the respondent Board were satisfied and reconnection was sought for, when the appellant/petitioner was told that they could avail a new connection. The request made by the appellant to have

'reconnection' was turned down as per Exts. P3 and P4. This was sought to be challenged by filing writ petition with the following prayers:

(i) Issue writ of certiorari or any other writ for the records leading to Exhibit P3 and P4 and quash the same.

(ii) Issue a writ of mandamus or any other writ, order or direction directing the respondents 1 to 4 give electric connection to the consumer No. 5553 of Pirayiri Panchayath Palakkad district pending disposal of this writ petition.

(iii) Issue any other writ order or direction as this Honourable Court may deem fit in the circumstances of the case.

And

(iv) Award cost of this petition.

3. It is seen from the judgment under challenge that during pendency of the writ petition, an interim order was passed by learned single Judge on 30.04.2009, whereby connection was ordered to be given. Pursuant to the said order, temporary connection was effected. The matter was came up for final consideration before the Court on 04.02.2014 when the factual position as above was taken note of. The observation made by the

Court as contained in paragraph 4 of the judgment is as follows :

"4. Heard. It has been held by this Court in the decision reported in **Bell Foods Marine Division Vs. KSEB** (supra) that, where a Cold Storage or a Freezing Unit is conducted as a business activity, the charges for consumption of energy would have to be billed at the LT VII (A) tariff. It is only when a Cold Storage is used for storing a person's own goods that, the concessional tariff rate, LT IV would become applicable. In view of the above dictum, I do not find any illegality in the levy of charges on the petitioner at the LT VII(A) tariff rates. Since the petitioner's electric connection has already been restored pursuant to the interim order granted by this Court on 30.04.09, I am not satisfied that the petitioner is entitled to any further reliefs in this writ petition."

4. The learned Judge also observed before making the observation as quoted above, in the previous paragraph, that as per the proceedings dated 16.06.2009 fresh connection was granted to the petitioner and that he has been charged at LT VII (A) tariff ever since. The learned counsel for the appellant points out that the observation in paragraph 3 as to the higher rate being charged at LT VII (A) tariff is in respect of the cold storage. It is

stated that appellant is entitled to have concessional rate in respect of the ice factory and as such the observation made by the learned single Judge in paragraph 4 to the effect there was no illegality in levy of LT VII (A) tariff is causing much adverse result. Hence the challenge. Grounds B and E raised in support of the challenge are relevant, which are extracted below :

"B. The learned Single Judge wrongly entered a finding that the appellant should pay tariff at a higher rate when that issue was not under adjudication at all before the learned Judge and the writ petition has become really infructuous in view of the reconnection already ordered.

E. The appellant respectfully submits that the judgment of the learned Judge needs to be corrected and modified by deleting the irrelevant portion relating to tariff. "

5. This Court finds that, as on date the relief sought for by the writ petitioner to have the power supply restored in respect of consumer number bearing No. 5553 stands satisfied. But it is relevant to note that the interim order passed by the learned single Judge in the writ petition on 30.04.2009 was not for a 'reconnection'; but a 'new connection' as provided under the Regulation No. 41(5), in accordance with stipulation under Clause 21.

6. After going through materials on record and hearing both the sides, this Court finds that whatever benefit was given to the appellant/petitioner pursuant to the interim order dated 30.04.2009 could be continued in accordance with law, particularly the Regulations and stipulations as mentioned therein. The writ petition did not contain any other prayer, than to have electric connection to the consumer No. 5553 of Pirayiri Panchayath. Since the said relief has already been given to the extent, as ordered by the Court, while granting interim relief in the writ petition, which was made absolute, nothing further remains to be considered. The appellant himself concedes under Ground No. B raised in the appeal that the writ petition itself had become infructuous. The dispute, if any, with regard to classification is left open.

sd/-

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

sd/-

**K. RAMAKRISHNAN,
(JUDGE)**

kmd