

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

WP(C).No. 280 of 2015 (H)

PETITIONER(S):

**PANNEER SELVAM,
ASSISTANT ENGINEER, KERALA STATE ELECTRICITY BOARD,
ELECTRICAL DIVISION,
PEERUMEDU, IDUKKI DISTRICT - 685 531, RESIDING AT D2 QUARTERS,
66 K.V. SUBSTATION COLONEY, PEERUMEDU, IDUKKI DISTRICT.**

BY ADV. SRI.P.M.PAREETH

RESPONDENT(S):

- 1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VIDYUTHI BHAVANAM,
PATTOM, THIRUVANANTHAPURAM.**
- 2. PRADAP G.NAINAN,
EXECUTIVE ENGINEER, KERALA STATE ELECTRICITY BOARD,
ELECTRICAL DIVISION, KATTAPPANA, KATTAPPANA P.O.,
IDUKKI DISTRICT - 685 515.**
- 3. K.S.SALEEMKUMAR,
ASST. EXECUTIVE ENGINEER,
KERALA STATE ELECTRICITY BOARD, ELECTRICAL DIVISION,
KATTAPPANA, KATTAPPANA P.O.,
IDUKKI DISTRICT - 685 515.**
- 4. EXECUTIVE ENGINEER,
KERALA STATE ELECTRICITY BOARD, ELECTRICAL DIVISION,
PEERUMEDU, IDUKKI DISTRICT - 685 531.**
- 5. KERALA STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
SISU VIHAR LANE, VAZHUTHACAUD, THIRUVANANTHAPURAM.**

BY ADV. SRI.K.S.ANIL, SC

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
06-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 280 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: A TRUE PHOTOCOPY OF THE LETTER DATED 22/02/2012 ISSUED BY THE
3RD RESPONDENT TO THE PETITIONER.**

**EXHIBIT P2: A TRUE PHOTOCOPY OF THE LETTER DATED 21/07/2012 ISSUED BY THE
2ND RESPONDENT TO THE 4TH RESPONDENT.**

**EXHIBIT P3: A TRUE PHOTOCOPY OF THE ORDER DATED 15/12/2012 ISSUED BY THE
ASST. EXECUTIVE ENGINEER, SUB STATION SUB DIVISION VAZHATHOPE.**

**EXHIBIT P4: A TRUE PHOTOCOPY OF THE ORDER DATED 30/05/2013 IN
C.C.NO. 187/2012 ISSUED BY THE CONSUMER DISPUTES REDRESSAL
FORUM IDUKKI.**

**EXHIBIT P5: A TRUE PHOTOCOPY OF THE ORDER DATED 30/08/2014 IN
APPEAL NO. 614/2013 ISSUED BY FIFTH RESPONDENT.**

**EXHIBIT P6: A TRUE PHOTOCOPY OF THE LETTER NO. GB2/GEN/2014-15/797
DATED 22/11/2014.**

EXHIBIT P7: A TRUE PHOTOCOPY OF THE B.O.NO. 2150/2000 DATED 29/08/2000.

EXHIBIT P8: A TRUE PHOTOCOPY OF THE B.O.NO. 76/2014 DATED 10/01/2014.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.MUHAMED MUSTAQUE, J.

W.P.(C).No. 280 of 2015

Dated this the 6th day of January, 2015

J U D G M E N T

The petitioner is working as Assistant Engineer at Electrical Division Peerumedu with Kerala State Electricity Board. There are certain proceedings against the petitioner imposing penalty for over staying in the quarters temporarily allotted to him. Challenging the above proceedings, the petitioner approached the Consumer Forum. Ext.P4 is the order passed by the Consumer Disputes Redressal Forum, Idukki. The Consumer Disputes Redressal Forum partially allowed the petitioner's complaint. Thereafter this was carried in appeal by the respondents 2 to 4 before the State Commission. The State Commission found that the complaint made by the petitioner is not maintainable before the forum and allowed the appeal and set aside Ext.P4 order and dismissed the complaint. However while allowing appeal the petitioner was directed to pay an amount of Rs.10,000/- as cost. Thereafter the petitioner was served with Ext.P6 communication issued by the Electricity Board. The

petitioner submits that pursuant to Ext.P6, an amount of Rs.10,000/- has been recovered from his salary by the Board. The petitioner has filed this writ petition challenging Ext.P6 order as well imposition of cost by the State Commission.

2. The learned Standing Counsel for the Electricity Board points out that this writ petition is not maintainable as petitioner has an alternate remedy before the National Commission.

3. In the light of dictum laid down by the Supreme Court in **Cicily Kallarackal Vs Vehicle Factory [2012 (4) KLT 46 (SC)]** any person aggrieved by the order passed by the State Commission shall approach National Commission and cannot approach the High Court ignoring alternate remedy. However it is to be noted that the petitioner accepts the decision of the Commission that complaint is not maintainable before the Commission. The petitioner has no challenge against the above decision of the above Commission. In view of the fact that there is no challenge against the decision on merit, the only surviving

question is whether the imposition of the cost on the petitioner is warranted. I am of the view that the decision of payment of cost is separable from the decision on the merit as the cost is not the subject matter of the complaint. On the other hand, the cost has been imposed on finding that complaint is not maintainable. It is to be noted that forum has passed elaborate order on various aspects and held in favour of the petitioner. Under such circumstances, imposition of cost is jurisdictional error committed by the Commission. Therefore, that finding of the Commission is set aside. If any amount is recovered from the petitioner's salary, it is recoupable to his credit.

4. Regarding the main issue of imposition of penalty on petitioner for over staying quarters, the petitioner is at liberty to approach the 1st respondent by way of representation. This shall be done within a period of three weeks. Thereupon the 1st respondent shall take a decision in the matter after adverting to relevant records and after hearing the petitioner and others within a period

of two months. Till such decision is taken by the 1st respondent no recovery proceedings based on Ext.P2 order shall be made against the petitioner.

Accordingly the writ petition is disposed of as above.

**A.MUHAMED MUSTAQUE,
JUDGE**

jm/