

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

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

WP(C).No.5634 of 2011 (D)

PETITIONER :

THE CALICUT COSMOPOLITAN CLUB,
BEACH ROAD, KOZHIKODE, REPRESENTED BY ITS
PRESIDENT, K.ABDUL GAFOOR.

BY ADVS.SRI.K.SRIKUMAR
SRI.P.R.AJITHKUMAR

RESPONDENTS :

1. THE KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVAN,
PATTOM PALACE P.O., THIRUVANANTHAPURAM – 695 001.
2. THE DEPUTY CHIEF ENGINEER,
KSEB, ELECTRICAL CIRCLE, KOZHIKODE – 673 032.
3. THE ASSISTANT ENGINEER,
KSEB, ELECTRICAL SECTION BEACH, KOZHIKODE – 673 032.
4. THE ASSISTANT ENGINEER (APTS), KSEB,
KOZHIKODE UNIT, KOZHIKODE – 673 001.
5. STATE OF KERALA, REPRESENTED BY
THE SECRETARY, POWER DEPARTMENT,
THIRUVANANTHAPURAM – 695 001.
6. KERALA STATE ELECTRICITY REGULATORY COMMISSION,
VELLAYAMBALAM, THIRUVANANTHAPURAM,
REPRESENTED BY ITS CHAIRMAN – 695 001.

R1-4 BY ADV. SRI.T.R.RAJAN, SC, K.S.E.B.
R6 BY ADV. SRI.S.SUJIN, SC, ELECTRICITY REGULATORY COMMISSION
BY GOVERNMENT PLEADER SRI.P.V.ELIAS
BY SRI.S.SREEKUMAR
BY SRI.P.P.THAJUDEEN, SC, K.S.E.B

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
08-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	:	COPY OF THE SITE MAHAZAR DTD.20.1.2011.
EXT.P2	:	COPY OF THE PROVISIONAL BILL DTD.20.1.2011.
EXT.P3	:	COPY OF THE OBJECTION DTD.4.2.2011.
EXT.P4	:	COPY OF THE ORDER No.DB 37/AE.ES BEACH/ 10-11/186 DTD.17.2.2011.
EXT.P5	:	COPY OF THE FINAL REVISED BILL DTD.16.2.2011.
EXT.P6	:	COPY OF THE BOARD ORDER DTD.7.2.2008.
EXT.P7	:	COPY OF THE SRO.No.250/2005.

RESPONDENTS' EXHIBITS :- NIL.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C).No.5634 of 2011

Dated this the 08th day of June, 2015

JUDGMENT

The petitioner is a Consumer of Electricity under the 3rd respondent with Consumer No.BS 1221019694 under LT-VIIA commercial tariff. On 21.1.2011 the Anti-Power Theft Squad inspected the petitioner's premises and issued Ext.P1 site mahazar alleging detection of unauthorised connection load equivalent to 55 KW. The petitioner was issued with Ext.P2 demand to which Ext.P3 objection was submitted. After considering the objection raised by the petitioner the 3rd respondent issued Ext.P4 order revising the penal assessment which was followed by Ext.P5 revised demand for a sum of ₹3,90,267/-. It is aggrieved by Ext.P5 the petitioner has approached this Court in this Writ Petition seeking a writ of certiorari to quash Exts.P4 and P5 and seeking a declaration that Regulation 51(1) of the Kerala State Electricity Board Terms and Conditions of Supply, 2005 is ultravires of the Electricity Act, 2003 and therefore unenforceable. He has also sought a writ of certiorari to quash Ext.P7 notification by which the Deputy Chief Engineers of the

Electricity Circles were notified as appellate authority for the purpose of appeal under Section 127 of the Electricity Act, 2003.

2. By order dated 23.2.2011 this Court granted an interim order staying disconnection of power supply to the petitioner's premises for non-payment of Ext.P5 final bill and also recovery of the amounts demanded therein, in the event of the petitioner paying one third of the amount demanded in Ext.P5 bill within one week from the date of that order.

3. The learned counsel for the petitioner would submit that in compliance of the above interim order passed by this Court the petitioner has already remitted one third of the amount demanded in Ext.P5 bill. The learned counsel would further submit that, in view of the fact that the appellate authority in terms of Section 127 of the Act has already been notified by the Government by G.O.(P) No.34/2014/PD. dated 15.1.2014, the petitioner may be permitted to file a statutory appeal before that authority within the time limit that may be fixed by this Court and therefore, the Writ Petition itself can be disposed of by relegating the petitioner to approach that statutory authority.

4. I heard the arguments of the learned counsel for the petitioner and also the learned Standing Counsel for the respondent/Board.

5. It is aggrieved by Ext.P4 penal assessment and Ext.P5 revised demand the petitioner has approached this Court in this Writ Petition. The penal assessment in Ext.P4 is appealable before the appellate authority constituted by the Government vide G.O.(P) dated 15.1.2014. Since the petitioner is having an efficacious alternative remedy of appeal before the appellate authority so notified, this Court will not be justified in exercising jurisdiction under Article 226 of the Constitution of India. Therefore, this Writ Petition is disposed of with the following directions:-

1. If the petitioner is filing a statutory appeal against the penal assessment made in Ext.P4 before the appellate authority notified under G.O. (P)No.34/2014/PD dated 15.1.2014, within a period of two weeks from the date of receipt of a certified copy of this judgment, after complying with the statutory requirements under Sub-section (2) of Section 127 of the Act, the said appellate authority shall dispose of that appeal

on merits, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of such appeal.

2. It is made clear that, while computing the amount required to be paid under Sub-section (2) of Section 127 of the Act, credit shall be given to the amount already paid by the petitioner towards the penal assessment made in Ext.P4.
3. If the petitioner complies with the statutory requirement of Sub-section (2) of Section 127 of the Act, as directed above, any coercive steps for recovery of the balance amount in Ext.P5 demand notice shall be deferred till the disposal of that appeal.

It is made clear that this Court has not expressed anything on the merits of the contentions raised by both sides and it would be open for them to raise all such contentions before the appellate authority.