

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

WP(C) .No. 7045 of 2009 (A)

PETITIONER(S) :

M/S.ESSAR TELECOM INFRASTRUCTURE (P) LTD.,
36/2624, FIRST FLOOR,
CHERAMANGALATHU HOUSE, SHENOY ROAD, COCHIN-682 017,
REPRESENTED BY ASSISTANT MANAGER,
(LEGAL & ACQUISITION) MR.BABU PATTATHANAM.

BY ADVS.SRI.SANTHOSH MATHEW
SRI.SATHISH NINAN.

RESPONDENT(S) :

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1. THE KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VYDYUTHIBHAVANAM,
THIRUVANANTHAPURAM.
 2. THE DEPUTY CHIEF ENGINEER,
K.S.E.BOARD, ELECTRICAL CIRCLE, KOTTAYAM.
 3. THE ASSISTANT ENGINEER,
K.S.E.BOARD, ELECTRICAL SECTION, VAIKOM,
KOTTAYAM DISTRICT.

BY SRI.P.P.THAJUDEEN, SC, K.S.E.B.,
BY SRI.T.R.RAJAN, SC, K.S.E.B.,
BY ADV. SMT.NAZEEBA.O.H., KERALA STATE ELECTRICITY BOARD,
BY ADV. SRI.RAJU JOSEPH (SR.) &
BY ADV. SRI.K.T.PAULOSE, SC, KSEB.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 21-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ivs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXT. P1 : TRUE COPY OF THE MAHAZAR DATED 09/12/2008.

EXT. P2 : TRUE COPY OF THE LETTER DATED 11/12/2008 FOR A SUM OF
₹ 1,23,547/-ISSUED BY THE 3RD RESPONDENT.

EXT. P3 : TRUE COPY OF THE REPLY DATED 18/12/2008 SUBMITTED BY THE
PETITIONER.

EXT. P4 : TRUE COPY OF THE ARGUMENT NOTE DATED 31/01/2009 SUBMITTED
BY THE PETITIONER.

EXT. P5 : TRUE COPY OF THE ORDER NO.DB-3/APPEAL HEARING/VKM/2008-
09/08-09 DATED 30/01/2009 ISSUED BY THE THIRD RESPONDENT.

EXT. P6 : TRUE COPY OF THE FINAL ASSESSMENT BILL DATED 17/02/2009
ISSUED BY 3RD RESPONDENT.

EXT. P7 : TRUE COPY OF THE BOARD ORDER DATED 15/01/2003.

EXT. P8 : TRUE COPY OF THE TARIFF ORDER AS ON 01/01/2006.

EXT. P9 : TRUE COPY OF THE REGULARISATION APPLICATION DATED
19/02/2009 BY THE PETITIONER.

EXT. P10 : TRUE COPY OF THE RECEIPT DATED 19/02/2009 ISSUED TO THE
PETITIONER BY 3RD RESPONDENT.

EXT. P11 : TRUE COPY OF THE CONNECTION DIAGRAM.

EXT. P12 : TRUE COPY OF THE CIRCULAR NO.DPC I/C-G/11/08 DATED
02/07/2008.

EXT. P13 : TRUE COPY OF THE DECISION IN 2007(3) KLT 388.

EXT. P14 : TRUE COPY OF THE NOTIFICATION DATED 24/10/2008 ISSUED BY
THE KERALA STATE ELECTRICITY REGULATORY COMMISSION.

EXT. P15 : TRUE COPY OF THE INTERIM ORDER DATED 05/11/2008 IN WP(C)
NO.32618/08.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

ANIL K.NARENDRA, J

W.P.(C)No.7045 OF 2009

DATED THIS THE 21st DAY OF MAY, 2015

JUDGMENT

The petitioner, which is a Telecom Infrastructure Provider, has filed this writ petition mainly seeking a writ of certiorari to quash Exts.P1, P2, P2(a), P5, P6 and P12 issued by the Kerala State Electricity Board.

2. Going by the averments in the writ petition and the documents on record, the petitioner's premises with Consumer No.19272 is provided with a three phase power supply under LT VII-A commercial tariff, with a sanctioned connected load of 12 KW. The Anti Power Theft Squad inspected the petitioner's premises on 09.12.2008 and detected an unauthorised additional connected load of 4KW. The petitioner was issued with Ext.P1 site mahazar, which was followed by Ext.P2 letter and P2(a) penal demand, demanding a sum of ₹1,23,547/- towards fixed charges and current charges.

3. According to the petitioner, going by the calculation made in Ext.P2, for the additional connected load of 4KW detected in the inspection conducted by the Anti Power Theft Squad on 9.12.2008, the Board has demanded twice the fixed charge at the

rate of ₹50 per KW per day applicable to LT VIII tariff for temporary extension and calculated the same for a period of 224 days for the period from 5/2008 to 10/2008, which is patently illegal. On receipt of Ext.P2 demand notice, the petitioner submitted Ext.P3 reply, which was followed by Ext.P4 argument notes. But without considering the objections raised by the petitioner, the third respondent in Ext.P5 order concluded that the demand made in Ext.P2 is perfectly legal and is in accordance with the Gazette notification dated 12.6.2007 and the KSEB circular dated 2.7.2008. Ext.P5 order was followed by Ext.P6 demand notice for a sum of ₹89,600/-.

4. I heard arguments of the learned counsel for the petitioner and also the learned Senior Counsel appearing for the respondent-Board.

5. The learned counsel for the petitioner would submit that the only issue that arises for consideration in this writ petition is as to the legality of the levy of penal fixed charges for an additional connected load of 4 KW made in Ext.P2, which is now confirmed in Ext.P5 and that the penal demand towards energy charges is not under challenge. As I have already

noticed, the power supply to the petitioner's premises is a three phase connection under LT VII-A, commercial tariff. Going by the Schedule of Tariff and Terms and Conditions of Supply by KSEB, with effect from 1.10.2007, the fixed charge applicable for consumers availing power supply with LT VII-A commercial tariff is ₹50 per KW per month for single phase connection and ₹100/- per KW per month for three phase connections. Now as evident from Ext.P2, for the additional unauthorised connected load of 4KW, the petitioner has been assessed taking fixed charges at the rate of ₹50 per KW per day, which is the fixed charge applicable under LT VIII tariff for temporary extensions. It is not in dispute that an additional connected load of 4KW was detected in the petitioner's premises in the inspection conducted by the Anti Power Theft Squad, which is evident from Ext.P1 site mahazar. When the petitioner who availed power supply to his premises under the LT VII-A commercial tariff used additional connected load, that has to be assessed for penal charges at twice the rate of fixed charges applicable to LT VII-A commercial tariff which is ₹100/- per month, whereas in Ext.P2 demand, the respondent-Board assessed it at the rate of ₹50/- per day per

KW, which is the rate of fixed charge applicable to LT VIII tariff for temporary extensions. Therefore, the assessment made in Exts.P2 and P5 to that extent cannot be sustained.

6. In the result, the penal demand made in Ext.P2, which was confirmed in Ext.P5 to the extent indicated above is set aside and the third respondent is directed to re-assess the penal fixed charges payable by the petitioner at the rate applicable for three phase connection under LT VII-A tariff and intimate the same to the petitioner by issuing a revised demand within a period of one month from the date of receipt of a certified copy of this judgment and the petitioner shall pay the balance amount, if any, within one month thereafter. On the other hand, if it is found that any excess amount has already been collected from the petitioner, the same shall be adjusted, in the future bills issued by the third respondent.

The writ petition is disposed of as above.

Sd/-

ANIL K.NARENDRA, JUDGE

dsn