

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

WP(C).No. 11320 of 2007 (V)

PETITIONER(S):

HIGHWAY GARDEN DRIVE IN (P) LTD.,
BYPASS ROAD, PADIVATTOM, KOCHI 24
REPRESENTED BY ITS EXECUTIVE DIRECTOR, ROJAN CHACKO.

BY ADV. SRI.ROY CHACKO

RESPONDENT(S):

1. THE KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVAN
THIRUVANANTHAPURAM.
2. THE DY.CHIEF ENGINEER, ELECTRICAL,
POWER HOUSE ROAD, ERNAKULAM.
3. THE ASST ENGINEER,
ELECTRICAL MAJOR SECTION, KSEB, PALARIVATTOM
KOCHI 682035.

R, BY ADV.SRI.P.SANTHALINGAM (SR), SC FOR KSEB.
R, BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB
R BY SRI.JOSE J.MATHEIKEL, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
26-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.(C) NO.11320 OF 2007

PETITIONER'S EXTS:

- EXT.P1 TRUE COPY OF THE MAHAZAR DATED 6.4.2005 PREPARED BY THE RESPONDENTS.
- EXT.P2 TRUE COPY OF THE COMMUNICATION DATED 13.4.2005 ISSUED BY THE RESPONDENTS.
- EXT.P3 TRUE COPY OF THE ADDL. BILL DT. 12.4.2005 ISSUED BY THE RESPONDENTS.
- EXT.P4 TRUE COPY OF THE JUDGMENT DATED 18.8.2005 IN
W.A.NO.1561/2005
- EXT.P5 TRUE COPY OF THE ORDER DATED 12.7.2006 OF THE ASST. ENGINEER ELE. SECTION, PALARIVATTOM.
- EXT.P6 TRUE COPY OF THE APPEAL DATED 24.7.2006 FILED BY THE PETITIONER BEFORE THE DY. CHIEF ENGINEER, K.S.E.BOARD.
- EXT.P7 TRUE COPY OF THE ORDER DATED 31.1.2007 PASSED BY THE DY.CHIEF ENGINEER.
- EXT.P8 TRUE COPY OF THE AFFIDAVIT FILED BY THE K.S.E.BOARD IN W.P.(C) NO. 12964/2005.

//TRUE COPY//

P.S. TO JUDGE.

V.CHITAMBARESH, J.

W.P (C) No.11320 of 2007

Dated this the 26th day of May, 2015

J U D G M E N T

The following contentions are raised by the petitioner:-

- i) There is no warrant to claim penal interest since deferred payment was permitted by this Court in Ext.P4 judgment.
- ii) Penalty should not have been imposed for the sole reason that one of the phases in the three phase connection had not recorded the consumption correctly.

2. It is not disputed that the petitioner paid the amount in time as stated in Ext.P4 judgment. Ext.P4 judgment does not state that the petitioner has to pay the amount with applicable interest. Therefore Regulation 36(5) of the KSEB Terms and Conditions of Supply, 2005 cannot be made applicable. The petitioner was given liberty to pay the amount in three instalments without incurring additional liability. Therefore the respondents were not justified in demanding penal interest from the petitioner for deferred payment.

3. It is seen that one of the phases had recorded a ridiculously low consumption when compared to other phases. Ext.P7 appellate order inter alia states as follows:-

“From the meter reading records of the consumer, it is evident that the energy consumption was more prior to the disputed period of 12/03 to 4/03 similarly the consumption was on a higher side after changing the meter consequent on APTS inspection. Further, it one phase (out of three phases) of the energy meter is open circuited, that phase consumption will not be recorded which can be reasonable assessed as $\frac{1}{3}$ rd of the true total consumption or 50% of the recorded consumption of the other two working phases for a balanced electrical load (equal load in all the three phases) condition. As per rules, the consumer is bound to maintain balanced load in the three phases. Hence, the assumption made by the respondents to compensate the B-phase loss by adding 50% to the recorded energy is justifiable.”

50% has been added to the recorded energy to compensate the loss in 'B' Phase. The stand adopted by the

respondents is reasonable and does not warrant any interference. This Court has held that there should be a balanced electrical load in all the three phases connection. The assessment on that basis cannot be said to be in any way arbitrary or illegal in the circumstances.

4. The third respondent is directed to issue a revised bill to the petitioner in the light of the above. The same shall be done within a period of one month from today. I also note the fact that the petitioner has already remitted the amount demanded. The excess amount if any paid by the petitioner shall be adjusted towards the future bills.

The Writ Petition is disposed of.

Sd/-
V.CHITAMBARESH,
Judge.

nj.