

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

WP(C).No. 10558 of 2009 (L)

PETITIONER:

M/S. K.K. PLASTICS, INDUSTRIAL DEVELOPMENT AREA,
ERUMATHALA.P.O., ALUVA.
REPRESENTED BY ITS MANAGING PARTNER, SRI.K.K.IBRAHIM.

BY ADVS. SRI.M.M.SAIDU MUHAMMED
SRI.A.G.ANILKUMAR

RESPONDENT(S):

1. THE STATE OF KERALA, REPRESENTED BY ITS
SECRETARY TO POWER DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.
2. THE KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VYDHUTHI BHAVAN, PATTOM
THIRUVANANTHAPURAM.
3. THE DEPUTY CHIEF ENGINEER,
APTS (CENTRAL REGION), ALUVA.
4. THE SPECIAL OFFICER (REVENUE),
KSEB, VYDHUTHI BHAVAN, PATTOM
TRIVANDRUM.

R1 BY GOVERNMENT PLEADER SRI P.V.ELIAS
R2-4 BY ADV. SMT.P.KRADHIKA-KSEB
R2 TO R4 BY ADV. SRI.P.P.THAJUDEEN, SC, K.S.E.B

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC.10558/09

PETITIONER'S EXTS:

- EXT.P1: COPY OF PENAL BILL DT.21.12.2002 ALONG WITH COVERING LETTER OF THE 4TH RESPONDENT.
- EXT.P2: COPY OF JUDGMENT DT.18.2.09 IN WPC.2593/09.
- EXT.P3: COPY OF JUDGMENT DT.26.2.09 IN W.A.NO.455/09.
- EXT.P4: COPY OF ORDER DT.11.3.09 IN I.A.214/09 IN W.A.NO.455/09.
- EXT.P5: COPY OF ORDER DT.19.3.09 PASSED BY THE 3RD RESPONDENT IN THE APPEAL FILED BY THE PETITIONER.

RESPONDENTS' EXTS: NIL

TRUE COPY

P.S.TO JUDGE

dsn

ANIL K.NARENDRA, J

W.P.(C)No.10558 Of 2009

DATED THIS THE 30th DAY OF JULY, 2015

JUDGMENT

The petitioner is a consumer for electricity under the Aluva Sub Division of the Kerala State Electricity Board with Consumer No.29/3835. It is a Small Scale Industrial Unit engaged in the manufacture and distribution of moulded plastics and other allied items. On 2.12.2002, the Anti Power Theft Squad (APTS) conducted an inspection in the petitioner's premises, which resulted in Ext.P1 penal bill for a sum of ₹6,31,339/-. Challenging the penal demand made in Ext.P1, the petitioner initially approached the Government which was forwarded to the 3rd respondent for consideration. The 3rd respondent directed the petitioner to deposit 50% of the penal demand made in Ext.P1, which the petitioner paid on 3.1.2003 as a condition for re-connection.

2. During the pendency of the appeal, the petitioner applied for additional connected load. When the respondent Board insisted payment of the balance amount demanded in Ext.P1 for considering that application, he has approached this Court in W.P(C)

No.2593/09. By Ext.P2 judgment dated 18.2.2009, this Court disposed of the aforesaid Writ Petition, directing the petitioner to furnish bank guarantee for the balance amount covered by Ext.P1 penal bill. But the aforesaid judgment was modified by the Division Bench of this Court in Ext.P3 judgment in W.A.No.455/2009, by which the petitioner was directed to remit ₹ 2 lakhs instead of furnishing bank guarantee for the balance amount demanded in Ext.P1. In Ext.P3 judgment, there was also a direction to the appellate authority to hear the appeal. Later, by Ext.P4 order dated 11.3.2009 in I.A.No.214/2009 in W.A.No.455/2009 this Court has clarified that the penultimate sentence of Ext.P3 judgment will stand substituted as: 'Appeal should be heard by the appellate authority as provided under Rule 3 of the Appeal to the Appellate Authority Rules, 2004.'

3. Thereafter, Ext.P5 order was passed by the 3rd respondent confirming the penal demand made in Ext.P1. It is aggrieved by Ext.P5 order passed by the 3rd respondent, the petitioner has filed this Writ Petition seeking various reliefs, including a writ of certiorari to quash Ext.P5 and a further

direction to restore the appeal filed by the petitioner against Ext.P1 penal demand for consideration of the same by the competent authority constituted by the 1st respondent as per Rule 3 of the Appeal to the Appellate Authority Rules, 2004.

4. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondent Board.

5. In W.P.(C)No.24714/2012 and connected cases, a Division Bench of this Court has directed the Government to notify the Appellate Authority as contemplated under Section 127 of the Electricity Act, 2003, pursuant to which the Government by G.O.(P)No.34/2014/PD dated 15.10.2014 notified Sri K.K.Unni, Retired Chief Electrical Inspector as the Appellate Authority to entertain the appeals filed by the consumers under Section 127 of the Act.

6. In such circumstances, Ext.P5 order passed by the 3rd respondent is set aside, giving liberty to the petitioner to file appeal against the penal demand made in Ext.P1, before the Appellate Authority constituted vide G.O.(P)No.34/2014/PD dated 15.10.2014.

7. Since the petitioner has already deposited ₹5,15,670/- out of the total demand of ₹6,31,339/- made in Ext.P1, the petitioner need not make any further deposit for filing an appeal before the Appellate Authority. If the petitioner files such an appeal within one month from the date of receipt of a certified copy of this judgment, the same shall be considered by the Appellate Authority on merits and pass appropriate orders thereon within a period of three months thereafter. Till such disposal, further recovery pursuant to Ext.P1 demand shall be kept in abeyance.

The Writ Petition is disposed of as above.

No order as to costs.

Sd/-
ANIL K.NARENDRA,
JUDGE

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