IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE B.P.RAY

THURSDAY, THE 22ND DAY OF MARCH 2012/2ND CHAITHRA 1934

WP(C).No. 14625 of 2007 (N)

PETITIONER(S):

M/S.SAJITHA TOURIST HOME,
MALAPPURAM ROAD, KOTTACKAL, MALAPPURAM,
REPRESENTED BY ITS MANAGER, K.K.SHAMAL.

BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENT(S):
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1. KERALA STATE ELECTRICITY BOARD,
   TRIVANDRUM REPRESENTED BY ITS SECRETARY.

2. THE DEPUTY CHIEF ENGINEER (ELECTRICAL),
   ELECTRICAL CIRCLE, TIRUR.

3. THE ASSISTANT ENGINEER,
   KERALA STATE ELECTRICITY BOARD MAJOR SECTION,
   KOTTACKAL, MALAPPURAM.

BY ADV. SRI.JOSE J.MATHEIKEL, SC, KSEB
BY ADV. SMT.P.K.RADHIKA-KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-03-2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

None appears. Dismissed for default.

22/03/2012 SD/- B.P.RAY,JUDGE

/TRUE COPY/

P.A.TO.JUDGE

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K. SURENDRA MOHAN, J.

W.P.(C) No. 14625 of 2007

Dated this the 12th day of January, 2015

J U D G M E N T

The petitioner is a consumer of electrical energy under the 3rd respondent. The petitioner is conducting a lodging house by name M/s. Sajitha Tourist Home at Kottackal. On 18.06.2005, the Anti Power Theft Squad (APTS) conducted a surprise inspection of the petitioner's premises. Ext.P2 is the mahazar relating to the said inspection. As per Ext.P2, it was found that the front glass of the mechanical meter that was installed in its premises was missing. The metal box of the meter showed a dent leaving a gap through which, it was possible to tamper with the same by using external means. It was also found that the meter had been freshly painted, which included the seals also. On the basis of the above, it has been concluded that, the meter had been tampered with, with the object of stopping the same by using some external device. A verification of the load of the equipments connected to the establishment showed that, the consumption of electrical energy was not commensurate with the installations that were found on the premises. It is stated that, there were ten air-conditioned rooms, twenty five double rooms, five three-bedded rooms and eighteen single rooms, totalling sixty rooms in all. Therefore, it was concluded that, there was theft of electrical energy.

2. As per Ext.P3 notice and supplementary bill the petitioner was charged with an amount of Rs.13,51,428/- (Rupees Thirteen lakhs Fifty One thousand Four hundred and Twenty Eight only). The petitioner was permitted to submit objections to Ext.P3 for which the petitioner has submitted objections as per Ext.P5. After considering the objections, by Ext.P7 final order the amount mentioned in Ext.P3 notice was confirmed. It was found that, the

explanations of the petitioner were not convincing or acceptable.

3. The petitioner then challenged Ext.P7 by preferring Ext.P8 appeal to the 2nd respondent. The 2nd respondent considered the appeal and by Ext.P9 reduced the amount that was charged on the petitioner as per Ext.P3. However, the liability of the petitioner was confirmed. Ext.P10 is the bill issued to the petitioner pursuant to Ext.P9.

4. The petitioner has filed this Writ Petition challenging Ext.P9. This Writ Petition was admitted on 11.5.2007 and as per the condition imposed by this Court for the grant of an interim order of stay, the petitioner has paid a total amount of Rs.3.75 lakhs. The petitioner has paid a further amount of Rs.5 lakhs pursuant to Ext.P6 judgment of this Court. Therefore, the petitioner has made a total payment of Rs.8.75 lakhs.

5. According to Sri.V.G. Arun, who appears for the petitioner, there is no evidence of theft available in this case. The entire allegation of the respondents is built upon surmises and presumptions. For the reason that, the glass cover of the meter was found missing and the further reason that a dent in the metalic cover of the meter revealed a gap through which external interference with the same was possible, it has been concluded that there was theft of electrical energy. The counsel points out that, the meter had been sealed as per Ext.P1 on 16.01.2004. The inspection conducted by the APTS was on 18.06.2005. During the interregnum period the meter readings were being regularly taken by the subordinates of the respondents. They had never reported any defect in the meter. The previous bills of the petitioner, produced as Ext.P4 series, show a steady pattern of consumption with no discernible fall in the consumption rate. Therefore, it is

contended that there is no evidence of theft of electrical energy. Though criminal proceedings had been initiated in addition to Ext.P3, they had ended in acquittal of the petitioner's Manager. In the above factual scenario, according to the counsel, there is absolutely no justification for mulcting the petitioner with the huge amount of Rs.13,51,428/- as done by Exts.P3 and P7. Though the amount has been reduced in Ext.P9, it is pointed out that the amount is still substantial, considering that there is no evidence of theft.

6. It is the further contention of the counsel for the petitioner that, the computation that has been adopted to arrive at the amount in Exts.P6 and P9, is wrong. The only computation permissible is as provided by section 126 of the Electricity Act, 2003 (hereinafter referred to as 'the Act' for short). Reliance is placed on the decision of a Division Bench of this Court in **K.S.E.B. v. Najeeb - 2005 (1) KLT**

406 to contend that, after the coming into force of the Electricity Act, 2003, no mode other than what is provided by section 126 of the Act could be resorted to, to make the computation in such circumstances as in the present case. In view of the above, it is contended that the impugned proceedings are unsustainable and liable to be set aside.

7. Sri. P.K. Radhika appears for the respondents. The contentions of the counsel for the petitioner are seriously opposed by the counsel for the respondents. According to the learned counsel, the petitioner has not challenged the mahazar – Ext.P2. Nor has he disputed the statements recorded therein. The meter installed in the petitioner's premises was an electro mechanical meter that was capable of being interfered with and manipulated by using external devises. The glass that covered the meter was missing. There was a dent in the meter that provided space for interference with the working of the meter using

an external device, which may even be as insignificant as a small piece of wood. To the contention of the counsel for the petitioner that no such external device has been recovered, it is submitted that such devises are easily available for use during the peak hours and are normally discarded after use. According to the counsel for the respondents therefore, the absence of recovery of any such article, cannot adversely affect the conclusions that flow from the condition of the meter that was available at the petitioner's premises. When compared with the nature of the electrical installations in the petitioner's establishment as well as the energy that would normally be required for working such appliances, it was clear that the consumption of the petitioner, recorded by the meter, was far below its actual consumption. The petitioner has not raised any dispute regarding the accuracy of the meter nor has he requisitioned for having the meter tested by following the procedures stipulated by law. After the inspection by the APTS, the petitioner was provided with a new meter. Thereafter, it was found that the consumption of the petitioner was much higher. Therefore, according to the counsel, all the attendant circumstances clearly show that, there was theft of electrical energy.

8. It is the contention of the counsel for the respondents that, in terms of Section 126 of the Act, the petitioner has been charged with a bill 1.5 times the tariff rates applicable to him as provided by law at that time. Though it has been stated by the employees of the petitioner that, the lodging house was functioning 24 hours, only 0.7 has been taken as the load factor, which implies that only 70% of his consumption was taken into account. The above procedure, according to the counsel, is stipulated by Regulation 27A of the Kerala Electricity Supply Code, 2005 (hereinafter referred to as 'the Supply Code' for short).

It is pointed out that the appellate authority has in Ext.P9 given a substantial reduction and therefore, no interference with the proceedings that are under challenge is called for. According to the counsel, the circumstances in the present case justify the inference that theft of electrical energy as contemplated by Section 135 of the Act has taken place.

9. Adv. V.G. Arun in reply submits that under Regulation 52(5) of the KSEB Terms and Conditions of Supply, 2005 (hereinafter referred to as 'the Conditions for Supply' for short), it has been provided that no theft case shall be booked for breakage of window glass or seal of the electrical meter where consumption pattern of the consumer for the past 12 months was reasonably uniform. Since the previous bills of the petitioner do not show any reduction in the consumption of energy, it is pointed out that the petitioner is entitled to the benefit of the said provision.

10. Heard.

11. The facts are not disputed. The APTS had conducted an inspection of the petitioner's premises on 18.06.2005 and noted the defects that are enumerated in Ext.P2 mahazar. The glass cover of the meter was admittedly missing. There was a dent in the metal cover of the meter, providing a gap through which a hand could be inserted. The meter had been painted in black, including the seals. It is clear from the above that, there was some kind of external interference with the meter. There is no explanation for the missing glass, the dent or the act of painting of the meter. The consumer was not within his rights to do any of the above acts. It is true that, the previous bills of 2003, produced as Ext.P4, show a more or less uniform pattern of consumption. But, that is before the installation of the present meter which was admittedly as per Ext.P1 only on 16.01.2004. Therefore, the said bills cannot be of any help.

12. It is true that, there is no evidence regarding the alleged theft of electrical energy that the petitioner is stated to have committed. However, that is usual in all cases where electrical energy is consumed without being recorded in the meter that is installed. The quantity of electrical energy that the consumer would have used in such circumstances is not capable of evaluation and can only be estimated. It is for such purpose that, the procedure contemplated by Regulation 27A of the Supply Code has been stipulated. Since there is *prima facie* evidence of tampering with the meter as stated above, the only other course open for the respondents was to estimate the energy that would have so escaped recording by the meter. It is to be noticed that, only 1.5 tariff rates as applicable at the relevant time has been charged on the petitioner in accordance with section 126 of the Act. However, it is to estimate the quantity of energy consumed on which such

charges was to be claimed that the procedure contemplated by Regulation 27A of the Supply Code has been employed. I do not find anything wrong with the said procedure. There were certain defects in the manner of computation contained in Ext.P7. However, the mistakes have been corrected by the appellate authority in Ext.P9. As a result, the amount charged on the petitioner as per Ext.P2 has been substantially reduced. It is on the basis of Ext.P9 that Ext.P10 bill has been issued to the petitioner.

13. It is contended by the counsel for the petitioner that in view of Regulation 52(5)(ii) of the Conditions for Supply, the proceedings initiated against him for theft is unsustainable. The said provision reads as follows:

> "(ii) This is in addition to any criminal proceedings that may be instituted under the provisions of the Act. However no theft case shall be booked for breakage of window glass or seal of the energy meter when it is concluded that the consumption pattern for the last 12

> months is reasonably uniform unless *prima facie* evidence of theft of energy is made out."

14. A perusal of the above provision shows that, the same applies to cases where there is breakage of window glass or seal. In the present case, Ext.P2 mahazar does not refer to any breakage of glass or seal. What has been found is that the glass was missing. Therefore, I am not satisfied that the said provision has any application to the present case. The counsel for the petitioner has placed reliance on the decision in **KSEB v. Najeeb** (Supra) to contend that, after the coming into force of the Electricity Act, 2003, the petitioner could be mulcted with penal charges only in the manner provided by section 126 of the Act and that, the regulations that were in force before the coming into force of the said Act, have no application. In the said case penal charges had been levied under Regulation 42 of the Conditions of Supply of electrical energy framed under the

Electricity (Supply) Act, 1948 and Section 24 of the Indian Electricity Act, 1910. This court held that, after the coming into force of the Electricity Act, 2003, the said provisions had ceased to be operative. The said question does not arise in the present case for the reason that the petitioner has been levied with penal charges only at 1.5 times, as stipulated by section 126 of the Act, at the relevant time. As already noticed above, it is only for the purpose of estimating the quantity of the electrical energy that was alleged to be the subject matter of theft that, the Regulation 27A of the Supply Code was employed. I do not find anything wrong with the said procedure adopted. It is true that, the criminal proceedings initiated on the basis of Ext.P2 mahazar has ended in acquittal. But, that does not preclude the respondents from initiating the impugned proceedings Exts.P7, P9 and P10.

15. For the above reasons, I do not find any grounds to interfere with the impugned proceedings or to grant any of the reliefs sought for. However, as already noticed above, the petitioner has paid a substantial portion of the amount demanded in Ext.P10 and what remains to be paid is only a small portion. The counsel for the petitioner apprehends that interest would be demanded on the said amount for the period that this Writ Petition was pending. The petitioner is therefore, permitted to pay the balance amount, payable as per Ext.P10, within a period of one month of the date of receipt of a copy of this judgment in full settlement thereof without being charged interest.

This Writ Petition is disposed of as above.

Sd/-
K.SURENDRA MOHAN,
JUDGE

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