

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

WP(C).No. 8593 of 2015 (Y)

PETITIONER(S):

**MALABAR INSTITUTE OF MEDICAL SCIENCES LTD.,
MINI BYE PASS ROAD, GOVINDAPURAM P.O.,
KOZHIKODE - 673 015, REP. BY ITS EXECUTIVE DIRECTOR,
MR.U.BASHEER.**

**BY ADVS.SRI.SHYAM PADMAN
SRI.A.RANJITH NARAYANAN
SRI.JOHN THITHEEMOS**

RESPONDENT(S):

- 1. THE ASSISTANT ENGINEER,
ELECTRIAL SECTION, KERALA STATE ELECTRICITY BOARD,
POTTAMMEL, CALICUT - 673 016.**
- 2. THE DEPUTY CHIEF ENGINEER,
ELECTRICAL CIRCLE, KSEB, KALPETTA,
WAYANAD - 673 121.**
- 3. KERALA STATE ELECTRICITY BOARD,
VYDUTHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM - 695 004.**

BY ADV. SRI.JAICE JACOB, SC

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
14-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

P1:THE TRUE COPY OF THE EXTRACT FROM THE MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF PETITIONER DATED 19.12.2014.

P2:THE TRUE COPY OF HT SERVICE CONNECTION AGREEMENT DATED 20.05.2009 COVERING LETTER DATED 23.06.2009.

P3:THE TRUE COPY OF THE APPLICATION FOR POWER REQUIREMENT SUBMITTED BY THE PETITIONER AND THE RECEIPT ISSUED BY THE RESPONDENT BOTH DATED 17.02.2012.

P4:THE TRUE COPY OF THE APPLICATION FOR ADDITIONAL POWER ALLOCATION DATED 30.10.2012 ALONG WITH THE COVERING LETTER AND THE RECEIPT DATED 05.11.2012.

P5:THE TRUE COPY OF THE REJECTION LETTER DATED 04.01.2013 ISSUED BY THE 1ST RESPONDENT ENCLOSING THE DIRECTIONS OF THE DEPUTY CHIEF ENGINEER, ELECTRICAL CIRCLE.

P6:THE TRUE COPY OF THE APPLICATION FOR ADDITIONAL LOAD DATED 28.02.2013 WITH RECEIPT NO.251337 DATED 01.03.2013.

P7:THE TRUE COPY OF THE SITE MAHAZAR DATED 28.02.2013.

P8:THE TRUE COPY OF THE SANCTION ORDER NO.B3-8429/2011/EIC DATED 13.01.2012 AND 13.03.2012.

P9:THE TRUE COPY OF THE REPRESENTATION DATED 20.03.2013.

P10:THE TRUE COPY OF THE NOTICE AND PROVISIONAL BILL DATED 03.04.2013.

P11:THE TRUE COPY OF THE OBJECTION DATED 08.04.2013.

P12:THE TRUE COPY OF THE AGREEMENT DATED 02.05.2013.

P13:THE TRUE COPY OF THE ORDER DATED 26.04.2013 AND THE FINAL BILL.

P14:THE TRUE COPY OF THE APPEAL PETITION DATED 09.05.2013.

P15:THE TRUE COPY OF THE ORDER DATED 28.06.2013 OF THE DEPUTY CHIEF ENGINEER, ELECTRICAL CIRCLE, KALPETTA.

P16:THE TRUE COPY OF THE REPRESENTATION DATED 09.04.2014.

P17:THE TRUE COPY OF THE NOTICE AND FINAL BILL DATED 19.04.2014.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No.8593 of 2015

Dated this the 14th day of September, 2015

JUDGMENT

The petitioner, a super specialty hospital which was opened in 2001 had a High Tension Electricity connection with a contract demand of 900 KVA which was subsequently enhanced to 1250 KVA. By Ext.P3 application dated 17/02/2012, the petitioner applied for an additional HT connection of 225 KVA. The said application was accepted by the respondent board but no allocation was done based on the said application. Thereafter, by Ext.P4 application dated 30/10/2012, the petitioner applied for an additional power allocation of 450KVA. This application was rejected by the 1st respondent by Ext.P5 covering letter dated 04/01/2013 enclosing another communication dated 20/12/2012 wherein the stand taken by the respondent board was that in so far as the petitioner was already an HTA consumer within the same premises, an additional HT connection to the same premises could not be permitted. It was also stated that the application submitted by the petitioner could be considered only as one seeking an additional load with an additional contract demand. By Ext.P6 application dated 28/02/2013, the petitioner once again applied for an additional load as required by Ext.P5 letter and the said application was submitted before the 1st respondent on 01/03/2013. In

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the mean while, however, on 28/02/2013, the Anti-Power Theft Squad of the respondent board conducted an inspection in the premises of the petitioner and drew up Ext.P7 mahazar, wherein an allegation was raised to the effect that the petitioner had drawn power from the installation to premises other than that for which the installation was sanctioned. In other words, the objection of the respondent as revealed from the mahazar was that the petitioner had utilized the electricity installation in the main hospital premises for the purposes of extending the supply to the cancer center which was located in the neighbouring building. It is relevant to note in this connection that, by Ext.P8 sanction letter, the Electrical Inspectorate had already sanctioned the additional load at the cancer center based on the application preferred by the petitioner earlier for the grant of an additional HT connection to the said building. When, pursuant to the inspection of the Anti-Power Theft Squad, the petitioner was served with Ext.P10 provisional bill for an amount of Rs.25,81,840/- under Sec.126 of the Electricity Act,2013, for unauthorized extension of 59KW that was detected by the Anti-Power Theft Squad at the time of inspection, the petitioner filed Ext.P11 objection pointing out inter alia that the respondent board itself had recognized the cancer center as part of the same premises as the hospital and, therefore, there was

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no unauthorized extension of electrical energy. Thereafter, by Ext.P12 agreement dated 02/05/2013, the petitioner also executed the agreement for the additional contract demand that enhanced the connection from 1250 KVA to 1700 KVA. Ext.P11 objections preferred by the petitioner against Ext.P10 provisional bill were considered by the Sub Engineer, who proceeded to reject the objection and confirm the demand in Ext.P10 provisional bill. The petitioner, therefore, preferred Ext.P14 appeal before the Deputy Chief Engineer by depositing 50% of the disputed amount (Rs.12,90,920/-). The appeal preferred by the petitioner was partly allowed by the appellate authority who, by Ext.P15 order dated 28/06/2013, quashed the demand of Rs.25,81,840/-. The appellate authority, however, proceeded to issue a direction to the Assistant Engineer, Electrical Section, to issue a fresh bill by treating the connected load of the cancer center as unauthorized load. While no steps were taken by the Assistant Engineer, Electrical Section, to compute the consequential demand based on Ext.P15 appellate order, the petitioner by Ext.P16 letter dated 09/04/2014 sought refund of the amounts that were deposited pending disposal of the appeal by the appellate authority. It was in response to the said letter that, by Ext.P17 communication dated 19/04/2014, the 1st respondent issued a final bill for

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Rs.12,70,686/-, stated to be consequential to Ext.P15 order of the appellate authority. In the said final bill, there is a direction to adjust the amount of Rs.12,70,686/- from the amount of Rs.12,90,920/- that had been paid by the petitioner pending disposal of the appeal. In the writ petition, Exts.P15 and P17 are impugned inter alia on the ground that, while Ext.P15 order of the appellate authority traverses beyond the initial notice that was issued to the petitioner, which dealt with unauthorized extension of the electrical connection to the premises in question, the appellate authority had confirmed the penalty on a ground different from what was proposed in the notices issued to the petitioner.

2. A counter affidavit has been filed on behalf of the respondent board wherein the stand taken is that the petitioner was informed that his application could be considered for additional load as early as on 04/01/2013 and they did not take any steps to submit such an application till 01/03/2013. It is also stated that the additional load connected to the cancer center, without obtaining a sanction as per Section 54 of the Electricity Act, read with Regulation 43(4) of the Central Electricity Authority Regulations, 2010, was in breach of the petitioner's obligations under the relevant statutory provisions. It is in

particular pointed out that the conduct of the petitioner in connecting the additional load without prior permission was an act that attracted the penalty under Section 126 of the Electricity Act, 2013.

3. I have heard the learned counsel appearing for the petitioner as also the learned Standing Counsel appearing for the respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I am of the view that the challenge in the writ petition against Exts.P15 and P17 orders must necessarily succeed. In Ext P7 mahazar, and Ext.P13 order of the Sub Engineer, the sole ground on which the respondents thought it fit to impose penalty on the petitioner was that the petitioner had unauthorizedly extended the load that was sanctioned in favour of the hospital by using a load of 59 KW in the cancer center located in the neighboring building. This was on the assumption that the cancer center was a separate premises from the hospital premises to which the load in question had been sanctioned. When the petitioner pointed out to the appellate authority that the premises of the hospital and the cancer center were one and the same and they could not be treated as

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different premises for the purposes of Section 126 of the Electricity Act, the said contention was accepted by the appellate authority in Ext.P15 order. The said aspect is also fortified by the fact that by Ext.P12 agreement, the petitioner was since sanctioned an additional contract demand with respect to the same premises and there was an enhancement of the contract demand from 1250 KVA, that was initially sanctioned to the main hospital, to 1700 KVA to accommodate both the hospital and the cancer center. In Ext.P15 appellate order, there is a specific finding entered into by the appellate authority that exonerates the petitioner from any penalty on the ground of unauthorized extension of the sanctioned load. Having accepted the said fact, the appellate authority then proceeded to confirm a penalty on the petitioner on a ground different from what was initially raised against the petitioner in the notices that preceded the adjudication order.

5. In my view, such a stand by the respondent board is legally untenable, since it is trite that a person cannot be penalized on a ground that is not put forth in the notice proposing penalty. It is also well settled that a person cannot be prejudiced to a greater extent than what he was before the filing of an appeal before the appellate authority. Therefore, in any event, Ext.P15 appellate order, to the

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extent it directs the issuance of a fresh bill by treating the connected load of the cancer center as unauthorized load, and Ext.P17 final bill for Rs.12,70,686/- which was issued as a consequence to Ext.P15 order, cannot be legally sustained. I therefore quash Ext.P15 order and Ext.P17 final bill, and direct the respondents to refund to the petitioner, the amount of Rs.12,90,920/-, that was paid by the petitioner as a pre-deposit pending disposal of the appeal before the appellate authority. The writ petition is thus allowed as above.

I make it clear that nothing in this judgment will stand in the way of the respondent board initiating penal proceedings against the petitioner for any conduct or action that is found to be in violation of the statutory provisions.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE