

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

WP(C).No. 12400 of 2012 (Y)

PETITIONER(S):

LAKESHORE HOSPITAL & RESEARCH CENTRE LIMITED
NH-4 BY-PASS, MARADU
NETTOOR P.O, KOCHI-682 304
REPRESENTED BY SHRI.PAULOSE MATHEW, CHIEF ENGINEER.

BY ADV. SRI.P.DEEPAK

RESPONDENT(S):

1. KERALA STATE ELECTRICITY BOARD
REPRESENTED BY ITS CHAIRMAN & MANAGING DIRECTOR
VYDYUTHI BHAVAN, THIRUVANANTHAPURAM-695 001.
2. THE SPECIAL OFFICER (REVENUE)
KERALA STATE ELECTRICITY BOARD, VYDYUTHI BHAVANAM
THIRUVANANTHAPURAM-695 001.
3. THE DEPUTY CHIEF ENGINEER
(ANTI POWER THEFT SQUAD)
KERALA STATE ELECTRICITY BOARD
THIRUVANANTHAPURAM-695 001.
4. THE ASSISTANT ENGINEER
ELECTRICAL SECTION, MARADU-682 305.

R1 BY ADV. SRI.JAICE JACOB,SC,KERALA STATE ELECTRICITY BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
14-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P(C) NO.12400/2012

PETITIONER'S EXTS:

EXHIBIT P1: TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DATED
22/4/2005.

EXHIBIT P2: TRUE COPY OF THE ORDSEER OF THE 2ND RESPONDENT DATED
11/5/2005.

EXHIBIT P3: TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DATED
18/5/2005.

EXHIBIT P4: A TRUE COPY OF THE JUDGMENT DATED 26/5/2005 IN
WPC.NO.15770/05.

EXHIBIT P5: A TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 6/6/06.

EXHIBIT P6: A TRUE COPY OF THE JUDGMENT DATED 23/12/2011 IN
WPC.16165/2006.

EXHIBIT P7: A TRUE COPY OF THE NOTICE OF THE 3RD RESPONDENT DATED 5/3/12.

EXHIBIT P8: A TRUE COPY OF THE REPLY DATED 14/3/12.

EXHIBIT P9: A TRUE COPY OF THE PROVISIONAL ASSESSMENT DATD 29/3/12 OF
THE 2ND RESPONDENT.

EXHIBIT P10: A TRUE COPY OF THE OBJECTION DATED 13/4/12 ADDRESSED TO THE
2ND RESPONDENT.

EXHIBIT P11: A TRUE COPY OF THE NOTICE OF THE 4TH RESPONDENT DASTED
17/4/12.

EXHIBIT P12: A TRUE COPY OF THE OBJECTION DATED 23/4/12 ADDRESSED TO THE
4TH RESPONDENT.

EXHIBIT P13: A TRUE COPY OF THE ORDER OF THE 4TH RESPONDENT DATED
10/5/12.

EXHIBIT P14: TRUE COPY OF THE COMMUNICATION DATED 3/3/2008 ADDRESSED
TO THE 2ND RESPONDENT DETAILING THE PAYMENTS MADE.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE.

V.CHITAMBARESH, J.

W.P (C) No.12400 of 2012

Dated this the 14th day of July, 2015

J U D G M E N T

The orders imposing penalty and confirmed in appeal were challenged by the petitioner in W.P.(C) No.16165/2006 on the file of this Court. The same was disposed of by Ext.P6 judgment dated 23.12.2011 and the operative part of the judgment is as follows:-

“In the above circumstances, Exts.P3 and P9 orders are quashed. But, this will not stand in the way of the respondents taking fresh proceedings after complying with the procedure under Section 126 of the Electricity Act, 2003. If no fresh orders are passed within two months from the date of receipt of a copy of this judgment or the respondents decide not to impose penalty, the amounts already paid by the petitioner towards penalty shall be adjusted against the future bills of the petitioner. If orders are passed within the said time, the amounts already paid shall be adjusted against amount imposed as penalty on the petitioner, if any.”

Ext.P9 order was passed by the second respondent on 29.3.2012 within a period of two months from the date

of service of Ext.P6 judgment (9.2.2012). It was decided therein to impose penalty on the petitioner within the time limit prescribed by this Court. Therefore the contention of the petitioner that there is an infraction of the time limit prescribed in Ext.P6 judgment cannot be countenanced.

2. It is reported that Ext.P9 invoice and Ext.R4(a) provisional assessment order were served on the petitioner simultaneously on 7.4.2012. Whether second respondent could issue an invoice in the nature of Ext.P9 bill is the question to be considered. Further question is whether the fourth respondent could follow the same in Ext.R4(a) provisional assessment order. It transpires that Ext.P13 final assessment order has since been served on the petitioner.

3. The correctness of Ext.P9 invoice and Ext.R4(a) order culminating in Ext.P13 order could be challenged in appeal. The petitioner has already deposited the entire amount demanded under protest. Nothing disables the petitioner from filing an appeal under Section 127 of the Electricity Act, 2003. Any appeal filed within one month from today shall be dealt

with within two months therefrom. This is particularly so since the appellate authority has now been constituted pursuant to the decision in Muhammed Haji v. Kerala State Electricity Board [2014 (3) KLT 706].

The Writ Petition is disposed of.

Sd/-
V.CHITAMBARESH,
Judge.

nj.