

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

WP(C).No. 12358 of 2011 (T)

PETITIONER:

**FR.GEORGE POTTAYIL V.C.
MANAGER, DE PAUL EDUCATIONAL INSTITUTIONS
ANGAMALY SOUTH P.O., PIN - 683 573
ERNAKULAM DISTRICT.**

BY ADV. SRI.WILSON URMESSE

RESPONDENTS:

- 1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VYDHUTHI BHAVAN
PATTOM P.O., THIRUVANANTHAPURAM - 695 004.**
- 2. THE ASSISTANT ENGINEER,
ELECTRICAL MAJOR SECTION
KERALA STATE ELECTRICITY BOARD, ANGAMALY P.O.
PIN - 683 572.**
- 3. THE KERALA STATE ELECTRICITY REGULATORY
COMMISSION, REPRESENTED BY ITS SECRETARY
VELLAYAMBALAM, THIRUVANANTHAPURAM - 695 010.**

**R, BY ADV. SRI.T.R.RAJAN,SC,K.S.E.B.
R3 BY ADV. SRI.S.SUJIN, SC, ELECTRICITY REGULATORY
COMMISSION
R BY SRI.S.SREEKUMAR
R BY SRI.P.P.THAJUDEEN, SC, K.S.E.B**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

W.P.(C) No.12358/2011

APPENDIX

PETITIONER'S EXTS:

**EXT.P1: COPY OF THE NOTICE DT.16.3.2011 ISSUED BY THE 2ND
RESPONDENT, IN RESPECT OF CON.NO.17169.**

**EXT.P2: COPY OF THE INVOICE/BILL DT.16.3.2011 ISSUED BY THE 2ND
RESPONDENT, IN RESPECT OF CON.NO.17169**

//TRUE COPY//

PA TO JUDGE

ANIL K.NARENDRA, J.

W.P.(C).No.12358 OF 2011

Dated this the 20th day of March, 2015

J U D G M E N T

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The petitioner is the Manager of De Paul Educational Institutions including De Paul Institute of Science & Technology at Angamaly. The educational institution is having an electricity connection with Consumer No.17169 coming under the KSEB Electrical Section, Angamaly. On implementation of Schedule of Tariff and Terms and Conditions for Retail Supply by KSEB, issued by the Kerala State Electricity Regulatory Commission, which came into force with effect from 1/12/2007, the petitioner's educational institution was classified under LT-VIIA commercial tariff, from LT-VIA tariff and the petitioner was issued with Ext.P1(a) demand notice dated 16.3.2011. It is aggrieved by the Schedule of Tariff and Terms and Conditions for Retail Supply by KSEB to the extent of classifying the self-financing educational institutions under LT-VIIA tariff and for other

consequential reliefs the petitioner has approached this Court in this Writ Petition.

2. By order dated 12.4.2011, this Court passed the following interim order

“There will be an interim order staying recovery of arrears of energy charges from the petitioner. The petitioner shall however pay future energy charges at the rate applicable to LT-VIIA category.”

3. The question involved in this Writ Petition is as to whether private self-financing educational institutions are liable to be charged under LT-VIIA tariff, in distinction with private aided educational institutions, which are charged under LT-VIA tariff. The issue stands settled in favour of the petitioner, as per a Division Bench decision of this Court in **Bro. Joseph Antony Vs. K.S.E.B (2009 (3) KLT 1022)**. It is brought to my notice that, the above decision is under challenge before the Apex Court in various Special Leave Petitions filed by the KSEB, and the Apex Court had stayed operation of the said judgment. However, unless the legal

position is reversed, this Court is bound to follow the decision in **Bro. Joseph Antony's case (supra)**, in view of the principle laid down by this Court in **Abdu Rehiman Vs. District Collector, Malappuram (2009 (4) KLT 485)**.

4. The further challenge in this Writ Petition is against Ext.P1(a) demand notice whereby the petitioner was requested to make payment of arrears of electricity charges at enhanced rate, i.e., under LT-VIIA tariff. The question regarding liability of the petitioner for payment at enhanced rate will depend upon outcome of the decision of the Apex Court. In view of the stay granted by the Apex Court, I am not inclined to restrain the respondent Board from charging the petitioner under the enhanced tariff. This is because of the fact that, if ultimately the Apex Court upholds the change of tariff, the respondent Board will be put to prejudice. On the other hand, the petitioner can seek refund/adjustment if the decision is ultimately in favour of the consumers. But it is only just and proper to restrain the respondent Board from recovering the

arrears on the basis of the enhanced tariff, till the matter is ultimately decided by the Apex Court.

5. Therefore this Writ Petition is disposed of directing the respondents to keep in abeyance recovery of arrears demanded under Ext.P1(a) notice till ultimate decision is rendered by the Apex Court in the SLPs referred above. It is made clear that the respondents are free to charge the petitioner under LT VIIA tariff for continued consumption of energy. It is made clear that payments made under the enhanced tariff will be liable to be refunded/adjusted in case the Apex Court upholds the judgment in **Bro. Joseph Antony's case (supra)**. It is also made clear that the respondents will be entitled to recover the arrears, if the change of tariff is ultimately upheld by the Apex Court.

This Writ Petition is disposed of as above. No order as to costs.

sd/-

**ANIL K.NARENDRAN, JUDGE**

ps/21/3/2015