

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. 13672 of 2008 (C)

PETITIONER:

**MOTHER SUPERIOR,
ST.PIOUS X CONVENT, KUTTIKANAM, PEERUMADE.**

**BY ADVS.SRI.KURIAN GEORGE KANNAMTHANAM (SR.)
SRI.TONY GEORGE KANNANTHANAM**

RESPONDENTS:

- 1. THE KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VYDHYUTHI BHAVAN
PATTOM P.O., TRIVANDRUM.**
- 2. THE PRINCIPAL SECRETARY TO GOVERNMENT,
POWER DEPARTMENT , GOVT. OF KERALA, SECRETARIAT
TRIVANDRUM.**
- 3. KERALA STATE ELECTRICITY REGULATORY
COMMISSION, REPRESENTED BY ITS SECRETARY, TRIVANDRUM.**
- 4. THE EXE. ENGINEER, ELECTRICAL SECTION,
POTHUPARA, PEERUMEDU.**

**R,R1 BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB
R BY SRI.T.K.KUNJABDULLA, SC KSERC
R4 & R5 BY ADV.M.M.SAIDU MUHAMMED.
GOVERNMENT PLEADER, SRI.RINNY STEPHEN CHAMAPARAMBIL**

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

WP(C).No. 13672 of 2008

APPENDIX

PETITIONER'S EXTS:

- EXT.P1: COPY OF NOTIFICATION DT.20.4.2007 ISSUED FROM THE 3RD RESPONDENT.**
- EXT.P2: COPY OF RELEVANT PORTION OF FACE PAGE 5, 6, 14 & 15 OF SCHEDULE OF TARIFF AND TERMS AND CONDITIONS FOR RETAIL SUPPLY BY K.S.E.B. WITH EFFECT FROM 1.12.2007.**
- EXT.P3: COPY OF BILL DT.16.4.2008 ISSUED BY K.S.E.B.**
- EXT.P4: COPY OF ORDER DT.9.4.2008 IN W.P(C) NO.12100/2008 OF THIS HON'BLE COURT.**

//TRUE COPY//

PA TO JUDGE

ANIL K.NARENDRAN, J.

W.P.(C).No.13672 OF 2008

Dated this the 20th day of March, 2015

J U D G M E N T

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The petitioner is the Mother Superior of St.Pious X Convent, an unaided educational institution. The educational institution is having an electricity connection with Consumer No.337 coming under the KSEB Electrical Section, Peermade. On implementation of Ext.P2 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.P3 demand notice dated 16.4.2008. It is aggrieved by Ext.P2 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 25.04.2008, this Court permitted the petitioner to pay electricity charges under LT-VIA tariff provisionally.

3. The question involved in this Writ Petition is as to whether private self-financing educational institutions are liable to be charged under LT-VIA 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.P3 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.P3 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.NARENDHAN, JUDGE**

ps/21/3/2015