

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. 14014 of 2010 (B)

PETITIONER:

**THE PRINCIPAL
ALPHONSA RESIDENTIAL SCHOOL, BHARANANGANAM P.O.,
PALA.**

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

RESPONDENTS:

**1. KERALA STATE ELECTRICITY
REP. BY ITS SECRETARY, VYDHUTHI BHAVAN, PATTOM
TRIVANDRUM.**

**2. THE ASST.ENGINEER, K.S.E.BOARD,
ELECTRICAL SECTION, BHARANANGANAM, PALA.**

**R1 BY ADV. SRI.T.R.RAJAN,SC,K.S.E.B.R5
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:**

WP(C).No. 14014 of 2010

APPENDIX

PETITIONER'S EXTS:

EXT.P1: COPY OF THE JUDGMENT DT.26.8.2009 IN W.A.NO.1388/2009 OF THIS HON'BLE COURT.

EXT.P2: COPY OF THE ORDER DT.7.4.2010 IN W.P.(C) NO.10813/2010 OF THIS HON'BLE COURT.

EXT.P3: COPY OF THE IMPUGNED BILL DT.22.4.2010 ISSUED THE ELECTRICITY BOARD, CONSUMER NO.5448-0

EXT.P4: COPY OF THE -DO - NO.1745-0

EXT.P5: COPY OF THE -DO - NO.609-0

EXT.P6: COPY OF THE -DO - NO.669-0

EXT.P7: COPY OF THE -DO - NO.984-0

EXT.P8: COPY OF THE -DO - NO.985-0

//TRUE COPY//

PA TO JUDGE

ANIL K.NARENDRA, J.

W.P.(C).No.14014 OF 2010

Dated this the 20th day of March, 2015

J U D G M E N T

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The petitioner is the Principal of an unaided Higher Secondary School. The educational institution is having an electricity connection with Consumer Nos.5448, 1745,609, 669, 984 and 985 coming under the KSEB Electrical Section, Bharananganam. 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 Exts.P3 to P8 demand notices dated 22.4.2010. 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. The interim order passed by this Court on 13.5.2010 was later modified by order dated 11.1.2011

“The order dated 13.05.2010 is modified to the extent that the petitioner shall continue to pay charges under LT VII A tariff during the pendency of the writ petition. However, the respondents are directed to keep the account of the same. So far as the past payment is concerned, the same is stayed subject to the result of the civil appeal pending before the Apex Court.”

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 Exts.P3 to P8 demand notices 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 Exts.P3 to P8 notices 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.

ps/21/3/2015

sd/-  
**ANIL K.NARENDHAN, JUDGE**