

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. 14701 of 2008 (A)

PETITIONERS:

- 1. MAR GREGORIOS MEMORIAL RESIDENTIAL
PUBLIC SCHOOL, KOTTARAKKARA REPRESENTED BY ITS
PRESENT MANAGER MANI SUBRAMANIAN.**
- 2. MAR GREGORIOS MEMORIAL CENTRAL
SCHOOL, KUZHIVILA, N.H.BYE PASS
KARIMANAL P.O., THIRUVANANTHAPURAM
83-REPRESENTED BY ITS MANAGER.**

**BY ADVS.SRI.MOHAN JACOB GEORGE
SMT.P.V.PARVATHI
SMT.REENA THOMAS
SRI.L.RAM MOHAN**

RESPONDENTS:

- 1. KERALA STATE ELECTRICITY BOARD
REPRESENTED BY ITS SECRETARY, VYDHUTHI BHAVAN
PATTOM P.O., THIRUVANANTHAPURAM 695 004**
- 2. THE ASSISTANT ENGINEER, ELECTRICAL
SECTION, K.S.E.B, KARUKACHAL
KOTTAYAM.**
- 3. THE ASSISTANT ENGINEER, ELECTRICAL
SECTION, K.S.E.B, KULKKADA
KOTTARAKKARA, KOLLAM DISTRICT.**
- 4. STATE OF KERALA, REPRESENTED BY ITS
PRINCIPAL SECRETARY TO GOVERNMENT, POWER DEPARTMENT
GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM.**
- 5. THE KERALA STATE ELECTRICITY
REGULATORY COMMISSION, REPRESENTED BY ITS SECRETARY
THIRUVANANTHAPURAM.**

**R,R1 TO 3 BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB
R,R5 BY ADV. SRI.S.SREEKUMAR,SC,KSERC
R BY GOVERNMENT PLEADER, SRI.RINNY STEPHEN CHAMAPARAMBIL
R BY SRI.P.P.THAJUDEEN, SC, K.S.E.B
SRI.S.SHARAN, SC.**

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

APPENDIX

PETITIONER'S EXTS:

- EXT.P1: COPY OF THE TRUST DEED DT.19.2.1994 OF THE PETITIONER SCHOOL.
- EXT.P1(A): COPY OF THE PROSPECTUS OF THE PETITIONER SCHOOL.
- EXT.P2: COPY OF THE NOC ISSUED BY THE GOVERNMENT OF KERALA DT.22.5.1995.
- EXT.P3: COPY OF THE AFFILIATION CERTIFICATE ISSUED BY THE CBSE TO THE SCHOOL DT.9.11.1995.
- EXT.P4: COPY OF THE RELEVANT PAGES OF THE KERALA STATE ELECTRICITY BOARD LOW TENSION (OTHER THAN PUBLIC LIGHTING TARIFF ORDER, 2001)
- EXT.P5: COPY OF THE BILL DT.7.12.2007 OF THE 2ND PETITIONER SCHOOL.
- EXT.P5(A): COPY OF THE BILL DT. 6.2.2008 OF THE 2ND PETITIONER SCHOOL.
- EXT.P5(B): COPY OF THE BILL DT. 7.4.2008 OF THE 2ND PETITIONER SCHOOL.
- EXT.P5(C): COPY OF THE MONTHLY BILL DT. 1.11.2006 IN RESPECT OF THE 1ST PETITIONER SCHOOL WITH ITS RECEIPT.
- EXT.P6: COPY OF THE RELEVANT PAGES OF THE SCHEDULE OF TARIFF AND TERMS AND CONDITIONS FOR RETAIL SUPPLY BY KSEB W.E.F.1.12.2007 ISSUED BY THE K.S.E. REGULATORY COMMISSION.
- EXT.P7: COPY OF BILL DT.9.4.2008 ISSUED BY THE 2ND RESPONDENT.
- EXT.P8: COPY OF THE NOTICE DT.28.4.2008 ISSUED TO THE 2ND PETITIONER BY THE 3RD RESPONDENT.
- EXT.P9: COPY OF THE INTERIM ORDER DT.11.2.2008 IN W.P.(C) NO.4802/2008.
- EXT.P10: COPY OF NOTICE ISSUED BY THE KUZHIVILA PAURASAMITHI EVIDENCING THE ANNOUNCEMENT OF THE SPONSORSHIP OF SCHOOL UNIFORMS TO 50 STUDENTS BY THE 2ND PETITIONER SCHOOL.

//TRUE COPY//

PA TO JUDGE

ANIL K.NARENDRA, J.

W.P.(C).No.14701 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 Manager of Mar Gregorios Memorial Residential Public School and Mar Gregorios Memorial Central School. The said Schools having electricity connection with Consumer Nos.8906 and 9793 coming under the KSEB Electrical Section, Kulakkada and Consumer Nos.10582 and 10583 under the KSEB Electrical Section, Kulathur. On implementation of Ext.P6 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 institutions were classified under LT-VIIA commercial tariff, from LT-VIA tariff and the petitioner was issued with Exts.P7 and P8 demand notices dated 11.9.2008 and 28.4.2008 respectively. It is aggrieved by Schedule of Tariff 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 16.5.2008, this Court passed the following interim order:

“There will be an interim order as prayed for, on condition that the petitioners continue to pay electricity charges under LT-VIA tariff. It is also clarified that no further payment under LT-VII A tariff shall be insisted upon until further orders. The petitioner's liability to pay under LT-VIIA tariff would be subject to the result of this Writ Petition.”

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. P7 and 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.P7 and 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.

sd/-

**ANIL K.NARENDRAN, JUDGE**

ps/21/3/2015