

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

WP(C).No. 14516 of 2011 (L)

PETITIONER(S):

**M/S. EURO MARINE PRODUCTS LTD.,
PUTHENTHOPE, KANIYAPURAM P.O., THIRUVANANTHAPURAM
REPRESENTED BY ITS MANAGING DIRECTOR, JOHN G.MORRIS.**

BY ADV. SRI.M.SREEKUMAR

RESPONDENT(S):

- 1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVAN, PATTOM
THIRUVANANTHAPURAM-695 004.**
- 2. DEPUTY CHIEF ENGINEER,
ANTI POWER THEFT SQUAD (HEADQUARTERS)
VYDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM-695004.**
- 3. ASSISTANT EXECUTIVE ENGINEER,
ELECTRICAL MAJOR SECTION, KANIYAPURAM.**
- 4. SPECIAL OFFICER (REVENUE),
VYDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM-695 004.**

**BY ADV. SRI.T.R.RAJAN,STANDING COUNSEL, K.S.E.B.
BY SRI.P.P.THAJUDEEN, SC, K.S.E.B**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C) NO.14516/2011

APPENDIX

PETITIONER'S EXHIBITS:

- P1 : COPY OF THE SITE MAHAZAR DATED 09.03.2005 OF THE ANTI
POWER THEFT SQUAD, PALAKKAD UNIT**
- P2 : COPY OF JUDGMENT OF THIS HON'BLE COURT IN WP(C) NO.8568/05
DATED 19.08.2005**
- P3 : COPY OF THE ORDER NO.HTB 1/148/05-06 DATED 22.11.2005**
- P4 : COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC
NO.34129/2005 DATED 08.12.2005**
- P5 : COPY OF THE BANKERS CHEQUE DRAWN ON KAZHAKUTTOM
BRANCH OF SBI DATED 22.02.2011**
- P6 : COPY OF THE ORDER NO.APTS/AV/575/05/TVM/54 DATED 01.03.2011**
- P7 : COPY OF NOTICE NO.HTB-1/148 DATED 17.05.2011 ISSUED BY THE 4TH
RESPONDENT**

RESPONDENTS' EXHIBITS:

//TRUE COPY//

P.A TO JUDGE

JV

ANIL K. NARENDRAN, J.

W.P.(C) No.14516 of 2011

Dated this the 8th day of June, 2015

JUDGMENT

The petitioner is a Public Limited Company engaged in the business of seafood products. The petitioner has availed a high tension electric connection to its premises with Consumer Code No.HTB-1/148, under the 3rd respondent. On 09.03.2005, the Anti Power Theft Squad (APTS) attached to the Palakkad Unit inspected the petitioner's premises and prepared Ext.P1 site mahazar. A reading of Ext.P1 site mahazar would show that the seal of the meter box was seen in a broken condition. A big hole was seen on the top of the meter box cover to facilitate illegal abstraction of energy. Further, the secondary leads from the CTPT units were found to be without insulation after the cable gland near the Test Terminal Block. The power supply to the petitioner's premises was disconnected on 09.03.2005 itself and it was issued with a penal demand dated 11.3.2005 demanding an amount of Rs..17,69,590/-.

2. Challenging the penal demand made on 11.03.2005, the

petitioner approached this Court in W.P.(C) No.8568/2005. By order dated 31.03.2005, this Court directed the petitioner to file objections within three weeks to penal demand dated 11.03.2005, treating it as a provisional assessment and notice calling objections, which shall be considered by the competent authority and a final decision shall be taken within a period of two months. Though the petitioner has submitted an objection dated 02.04.2005, the 3rd respondent issued a penal demand dated 29.03.2005 for Rs.8,96,163/- with date of disconnection as 13.04.2005. In such circumstances, this Court by Ext.P2 judgment directed the 4th respondent to consider the objection filed by the petitioner dated 02.04.2005 and take a decision in the matter within a period of two weeks.

3. Pursuant to the direction contained in Ext.P2 judgment, the 3rd respondent conducted a personal hearing and issued Ext.P3 order concluding that, since theft of energy was detected by the APTS, the petitioner has to be penalised under Section 126 (5) of the Electricity Act and the petitioner was directed to remit a sum of Rs.8,96,168/- on or before 06.12.2005.

4. Challenging Ext.P3, the petitioner again approached this Court in W.P.(C). No.34129/2005 and this Court by Ext.P4

judgment directed the petitioner to avail the statutory remedy of appeal before the 2nd respondent. Pursuant to the direction contained in Ext.P4 judgment of this Court, the petitioner submitted an appeal before the 2nd respondent, after remitting a sum of Rs.2,98,723/-, vide Ext.P5, being the 1/3rd of the penal demand. The 2nd respondent, after hearing the petitioner and also the officials of the Board, issued Ext.P6 order confirming the penal demand made against the petitioner and held that the petitioner is liable to remit the penal demand of Rs.8,96,168/- with surcharge at the prevailing rate from the date of Ext.P4 judgment, i.e., from 08.12.2005. Subsequent to Ext.P6, the petitioner was issued with Ext.P7 notice of the 4th respondent with a direction to remit a sum of Rs.16,37,196/- on or before 01.06.2011. It is aggrieved by Exts.P6 and P7, the petitioner is before this Court in this writ petition seeking a writ of certiorari to quash Exts.P3, P6 and P7.

5. A counter affidavit has been filed on behalf of the respondents justifying the penal demand made against the petitioner. According to the respondents, the inspection conducted on 09.03.2005 in the petitioner's premises by the APTS, revealed illegal abstraction of energy by resorting to

tampering of meter, which is evident from Ext.P1 site Mahazar. The provisional demand was confirmed in Ext.P3, against which the petitioner filed an appeal, which ended in dismissal by Ext.P6 order passed by the 2nd respondent. It was thereafter, the petitioner was issued with Ext.P7 notice demanding payment of the amount in terms of Ext.P6.

6. I heard the arguments of learned counsel for the petitioner and also the learned Standing Counsel appearing for the respondent Board.

7. The fact that, on 09.03.2005, an inspection in the petitioner's premises was conducted by the Anti Power Theft Squad is not in dispute. From the contentions advanced by the learned counsel for the petitioner, I notice that the petitioner is also not seriously disputed the findings in Ext.P1 mahazar that in the inspection conducted on 09.3.2005, the seal of the meter box was found in a broken condition; a big whole was seen on the top of the meter box cover; and the secondary leads from the CTPT units were found without insulation after the cable gland near the Test Terminal Block. According to the learned counsel for the petitioner, the aforesaid finding in Ext.P1 site mahazar would not indicate that there was an attempt on the part of the

petitioner for unauthorized use of electricity. Further, the hole seen in the meter box was due to corrosion as the petitioner's industrial unit is located in a coastal area and it is neither an indication of tampering of meter nor theft of electrical energy. The petitioner would also contend that even at the time of inspection, the meter was running properly and the officials of the Board were regularly visiting the industrial unit for taking meter reading and if the petitioner had tampered the meter installed in the premises, the said fact should have been reported by the officials of the Board. The petitioner would also contend that the absence of paper seal in the meter box and the absence of insulation at the terminal of the secondary leads from CTPT unit did not attribute to any unauthorised use of electricity by any artificial means and the responsibility to check the same is vested with the officials of the Board. Therefore, the petitioner cannot be fastened with any penal liability on the strength of Ext.P1 site mahazar and this crucial aspect was not considered by the Assessing Authority as well as the Appellate Authority while issuing Ext.P3 demand and Ext.P5 order.

8. But, the learned Standing Counsel for the Board would submit that findings of the Assessing Authority as well as the

Appellate Authority in Exts.P3 and P5 are perfectly legal and no interference of this Court is called for. The learned Standing Counsel would further submit that the petitioner who is a high tension consumer had indulged in illegal abstraction of electrical energy, which was detected in the inspection conducted by APTS on 09.03.005 which resulted in Ext.P3 penal demand. The penal demand made in Ext.P3 is now rightly confirmed by the Appellate Authority in Ext.P6.

9. A reading Ext.P1 site mahazar would clearly indicate that there was a attempt on the part of the petitioner for theft of electrical energy. The petitioner has no explanation as to how the seal of the meter box was found in a broken condition at the inspection conducted by the APTS on 09.03.2005. As far as the hole seen on the meter box is concerned, the only case of the petitioner is that such holes occurred due to rusting of meter box, which contention was rightly repelled by the Assessing Authority as well as the Appellate Authority. Therefore, the materials on record clearly make out a case of unauthorised use of electricity by artificial means and it was in such circumstances, Ext.P3 penal demand was raised against the petitioner, which was confirmed by the Appellate Authority in

Ext.P6 order.

10. A reading of Exts.P3 and P6 orders would make it abundantly clear that it was after giving the petitioner a reasonable opportunity of hearing and after considering the various contentions raised by the petitioner, the Assessing Authority as well as the Appellate Authority came to the conclusion that there was unauthorised use of electricity and that the petitioner has to be proceeded against under the penal provisions of Section 126 of the Electricity Act. The learned counsel for the petitioner could not make out any valid grounds to interfere with the concurrent findings of the Assessing Authority as well as the Appellate Authority in Exts.P3 and P6 orders. The reasoning of the Assessing Authority as well as the Appellate Authority in Exts.P3 and P6 are neither perverse nor patently illegal warranting an interference of this Court under Article 226 of the Constitution of India. In such circumstances, I find absolutely no grounds to interfere the demand made against the petitioner in Ext.P3, which was confirmed in Ext.P6 and also the consequential notice, i.e; Ext.P7. In the result, the writ petition fails.

11. Then the learned counsel for the petitioner would

submit that, the petitioner may be permitted to remit the amount demanded in Ext.P7 in monthly instalments. The said request made by the learned counsel for the petitioner is objected to by the learned Standing Counsel for the Board. But, considering the facts and circumstances of the case, I deem it appropriate to permit the petitioner to remit the balance amount due under Ext.P7 in five equal monthly instalments commencing from 01.07.2015 onwards. If the petitioner is remitting the amount in monthly instalments, as directed above, without any default, no recovery proceedings pursuant to Ext.P7 shall be taken against him. On the other hand, if there is any default on the part of the petitioner in remitting any one of the instalments, in terms of the aforesaid direction, it would be open to the Board to initiate recovery proceedings against the petitioner for recovering the entire amount.

The writ petition is dismissed.

sd/-
ANIL K. NARENDRA,
JUDGE