IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

FRIDAY, THE 12TH DAY OF JUNE 2015/22ND JYAISHTA, 1937

WP(C).No. 17615 of 2011 (B)

PETITIONER(S):

DR.RAJENDRA PRASAD.V,SOUTHERN SEAVIEW
APARTMENT, SOUTH CLIFFS, PERUMKULAM
VARKALA.

BY ADVS.SRI.RAJU JOSEPH (SR.)
SRI.J.JULIAN XAVIER
SRI.FIROZ K.ROBIN

RESPONDENT(S):
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1. **KERALA STATE ELECTRICITY BOARD,**
   REP.BY ITS SECRETARY, VYDYUTHI BHAVAN, PATTOM
   THIRUVANANTHAPURAM - 695 004

2. **THE DEPUTY CHIEF ENGINEER,ELECTRICAL**
   CIRCLE(URBAN), THIRUVANANTHAPURAM-695 001.

3. **THE ASSISTANT ENGINEER,ELECTRICAL**
   SECTION, VARKALA - 695 141

R1-R3 BY ADV. SMT.P.K.RADHIKA, STANDING COUNSEL, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JV

WP(C) NO.17615/2011

APPENDIX

PETITIONER'S EXHIBITS:

P1 : COPY OF THE CERTIFICATE DATED 14.05.2010 ISSUED BY THE SECRETARY, VARKALA MUNICIPALITY

P2 : COPY OF THE PETITION DATED 15.08.2007 FILED BEFORE THE 3RD RESPONDENT

P2(A) : COPY OF THE REPRESENTATION DATED 30.06.2008

P2(B) : COPY OF THE REPRESENTATION DATED 01.08.2009

P2(C) : COPY OF THE PETITION DATED 16.01.2010 FILED BY THE PETITIONER

P3 : COPY OF THE RECEIPT DATED 14.12.2009

P4 : COPY OF THE MAHAZAR

P5 : COPY OF THE OBJECTION DATED 05.02.2010 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT

P6 : COPY OF THE DEMAND DATED 16.02.2010

P7 : COPY OF THE ORDER DATED 21.04.2010 ISSUED BY THE 3RD RESPONDENT

P8 : COPY OF THE APPEAL DATED 22.04.2010 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT

P9 : COPY OF THE ORDER DATED 30.04.2011 ISSUED BY THE 2ND RESPONDENT

P10 : COPY OF THE AGREEMENT PREPARED BY SAJAN THOMAS ABRAHAM

P11 : COPY OF THE RECEIPT ISSUED BY THE LIC

P12 : COPY OF THE BILL DATED 14.06.2011 ISSUE D BY THE 3RD RESONDENT

RESPONDENTS' EXHIBITS:

R1 : PRINTOUTS OF THESE NET ADVERTISEMENTS

R2 : COPY OF THE MAHAZAR DATED 04.02.2010

//TRUE COPY//

P.A.TO JUDGE

JV

JV

ANIL K. NARENDRAN, J.

W.P.(C) No.17615 of 2011

Dated this the 12th day of June, 2015

JUDGMENT

The petitioner is a consumer for electricity under the 3rd respondent with consumer No. 14030 under LTI A tariff for building bearing No.XXIII/326A in Varkala Municipality. He has also having another connection with consumer No.17325 under LTVII A tariff to building No.XXIII/326B in the same Municipality.

2. On 04.02.2010, the Anti Power Theft Squad conducted an inspection in the petitioner's building which is provided with electricity under consumer No.14030. Alleging that, in the inspection conducted on 04.02.2010, misuse of electricity was detected, the petitioner was issued with Ext.P4 site mahazar, a copy of which has also been produced as Ext.R2 alongwith the counter affidavit filed by the respondents. On receipt of Ext.P4, the petitioner submitted Ext.P5 objection. The 3rd respondent after considering Ext.P5 objection, issued Ext.P6 provisional demand for a sum of Rs.1,47,366/-.

3. As can be seen from Ext.P6, for a total connected load of 28 KW detected at the time of inspection, as against the sanctioned connected load of 8 KW, penal charges were levied under LTVII A tariff, for a period of 23 months, i.e., for the period from 1.03.2008 to 31.01.2010. The provisional demand made in Ext.P6 was objected to by the petitioner by submitting an objection dated 22.03.2010 and the 3rd respondent confirmed the provisional demand by Ext.P7 proceedings dated 21.04.2010.

4. Challenging the penal demand made in Ext.P7, the petitioner filed Ext.P8 appeal before the 2nd respondent. The 2nd respondent considered the said appeal and passed Ext.P9 order confirming the penal demand made against the petitioner, after excluding a sum of Rs.13,575/- towards proportionate current charge calculation made in Ext.P7. It was also ordered that, any surcharge or interest accrued over the final assessment during the pendency of the appeal shall be waived.

5. Pursuant to Ext.P9 order, the petitioner was issued with a revised demand for a sum of Rs.98,327/-, vide Ext.P12 demand and disconnection notice. It is aggrieved by the penal demand made against the petitioner, which has culminated in Ext.P9 order of the appellate authority and Ext.P12 consequential

demand, the petitioner is before this Court in this writ petition seeking various reliefs.

6. A counter affidavit has been filed on behalf of the respondents contending that the meter installed in the petitioner's premises with consumer No.14030 was found faulty and therefore only a minimum bill applicable for the tariff was being demanded bi-monthly. Thereafter, the meter was changed on 04.02.2010. In the inspection conducted by the Anti Power Theft Squad on 04.02.2010 misuse of electricity was detected. In the said inspection it was found that, the electricity supplied under the concessional rate under LTIA domestic tariff was being used for running a beach shore resort under the name and style “Country Inn Beach Resort and Spa”. It was in such circumstances, the petitioner was assessed under Section 126(5) of the Electricity Act, 2003 after preparing Ext.R2 Mahazar. After considering the objection filed by the petitioner, the assessing officer came to the conclusion that, there is unauthorised use of electricity in the petitioner's premises with consumer No.14030 and it was in such circumstances, he was issued with the provisional demand. Since the period of misuse was ascertained on the basis of the lease deed executed between

the petitioner and the tenant, the penal demand was made for a period of 23 months. Challenging the penal demand, the petitioner filed appeal before the appellate authority, which was disposed of by Ext.P9 order confirming the penal demand, except the extent of excluding the proportionate current charge calculation amounting to Rs.13,575/- and waiver of surcharge or interest accrued over the final assessment during the pendency of the appeal. The respondents would further contend that, the petitioner has misused the energy supplied under the concessional rate under domestic tariff for non-domestic purpose, attracting penal demand under LTVII A commercial tariff and therefore, the demand made by the assessing officer, which has now been confirmed by the appellate authority warrants no interference at the hands of this Court.

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

8. The fact that Anti Power Theft Squad conducted an inspection in the petitioner's premises on 04.02.2010 is not in dispute. The petitioner is also not disputing the fact that after conducting such an inspection, the inspection team prepared a

site mahazar, which has been produced alongwith the counter affidavit filed by the respondents as Ext.R2. A perusal of Ext.R2 site Mahazar would show that the meter installed in the petitioner's premises with consumer No.14030 was not functioning at the time of inspection and the seal of the Terminal Cover of that meter was found broken. In the inspection, it was also found that, the energy supplied under the concessional domestic tariff was being used for running a commercial establishment in the name and style “Country Inn Beach Resort and Spa”. The inspection team has also found that, electricity is being extracted for commercial use by inserting wires from the outgoing terminal of the fuse near the meter. The inspection team has also found that, the total connected load in the aforesaid premises with consumer No.14030 is 28 KW. As the sanctioned connected load was only 8 KW, the assessing authority concluded that there is additional connected load as well as misuse of electrical energy for purpose other than for which it was authorised, and the petitioner was assessed under Section 126(6) of the Act. As can be seen from Ext.R2(b), the inspection was done in the presence of the petitioner.

9. Immediately after the inspection, the petitioner has

submitted Ext.P5 objection before the 3rd respondent. A reading of Ext.P5 objection would make it explicitly clear that, petitioner has rented out building bearing No.XXIII-326 B, which consists of six small apartments intended to be rented out for guests during holiday season and electric connection to the said premises is taken under commercial tariff, with consumer No.17325. The petitioner has entered into a lease agreement in respect of the aforesaid premises with one Sajan Thomas, and the aforesaid building was being used by the said Sajan Thomas for running a business. According to the petitioner, going by the terms of Ext.P10 lease agreement, the aforesaid Sajan Thomas has absolutely no authority to enter into his residential house with building No.XXIII-326 B. But, when the petitioner was out of India, he trespassed into the residential building and created documents to register a business under the name and style “Country Inn" using that residential building, after influencing the officials.

10. A reading of Ext.P5 objection filed by the petitioner would further show that, the building bearing No.XXIII-326 B is intended for guest house purpose and the petitioner is using the said building for that purpose. From Ext.P5, it can also be seen

that, regarding the household electrical items detected at the time of inspection, the only case of the petitioner is that such equipments were not in actual use and therefore, the officials of the Board have no authority to assess the connected load in the premises taking into account the connected load of those equipments as well. It can also be seen that at the time of inspection conducted by the officials of the Board, the guest of the petitioner was also there in the premises. The contentions raised in Ext.P5 was reiterated by the petitioner in Ext.P8 appeal filed before the appellate authority. It was after considering the various objections raised by the petitioner, the appellate authority came to the conclusion that the penal assessment made against the petitioner is liable to be confirmed subject to waiver of surcharge or interest accrued during the pendency of the appeal. The petitioner could not produce any valid material to show that the finding in Ext.R2 site mahazar that, at the time of inspection the petitioner's premises was used for purpose other than for which power supply was given is unsustainable. The main contention of the petitioner is that, it is a mischief committed by the tenant of the adjacent building in which the petitioner was provided with electricity for commercial purpose.

The materials on record clearly indicate that there is misuse of electricity in the petitioner's premises with consumer No.14030 and it was on that basis penal demand was made against him.

11. In **Classic Colour Lab, Kozhikode v. Assistant Engineer and Others [2014 (3) KLT 57]**, a Division Bench of this Court in which I was a party has held that once it is found that the consumer has indulged in unauthorized use of electricity supplied under concessional tariff then the entire consumption in that service connection has to be assessed under Section 126(6) of the Electricity Act. In such circumstances, the contention now raised by the petitioner that, when the petitioner's premises is having a sanctioned connected load of 8 KW, the respondent Board is not justified in demanding penal charges for the entire connected load of 24 KW detected at the time of inspection cannot be sustained.

12. The next contention raised by the learned counsel for the petitioner is that, the demand made by the respondent Board for a period of 23 months, i.e., from 01.03.2008 to 31.01.2010, is legally unsustainable and it can go only upto a maximum period of 12 months previous to the inspection conducted by the Anti Power Theft Squad. A reading of Section 126(5) of the Act

makes it explicitly clear that if the assessing officer reaches to the conclusion that unauthorised usage of electricity has taken place, the assessment shall be made for the entire period during which unauthorised usage of electricity has taken place. However, if the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

13. In the case on hand, it is relying on Ext.P10 lease agreement, the assessing officer came to the conclusion that the misuse of electrical energy was going on for a period beyond twelve months, and demanded penal charges for the period from 01.03.2008 to 31.01.2010. The learned counsel for the petitioner would then contend that, the respondent Board was not justified in relying on Ext.P10 lease agreement as well as Ext.P11 letter issued by the Branch Head of Reliance Life Insurance, in order to conclude that there was misuse of energy at the petitioner's premises, for the period from 01.03.2008 to 31.01.2010. As borne out from Ext.P11, the Reliance Life Insurance had conducted a three days' programme for the Sales Managers from 04.07.2008 to 06.07.2008 at 'Country Inn

Ayurvedic Beach Resort', which includes both food and accommodation. As borne out from Ext.P10 document, one of the building owned by the petitioner, with building No.XXIII-326B, which is having power supply under commercial tariff, i.e., LTVII A, was entrusted to one Sajan Thomas Abraham, for conducting a resort and ayurvedic spa. The petitioner has not disputed the execution of Ext.P10 lease agreement. Therefore, the fact that with effect from 01.03.2008, such a commercial activity was going on in the adjacent building is not in dispute. As I have already noticed, the only contention in Ext.P5 objection filed before the assessing officer and in Ext.P8 appeal filed before the appellate authority is that his tenant has committed some mischiefs by trespassing into the residential building having electricity connection with consumer No.14030 and done certain activities in connection with the resort and ayurvedic spa. Therefore, the version of the petitioner in Ext.P5 itself is sufficient to draw an inference that, building No.XXIII-326A which is provided with electric supply under the concessional domestic tariff of LTI A was being used for commercial purpose, attracting higher tariff of LTVII A. If that be so, the finding in Ext.R2(5) site mahazar and also that made by the assessing authority as well as the appellate authority in Ext.P6 demand notice and Ext.P9 appellate order that there was misuse of electricity in the petitioner's premises with consumer No.14030, cannot be termed either perverse or patently illegal, warranting an interference of this Court under Article 226 of Constitution of India.

14. The petitioner would also contend that under the tariff order prevailing during the relevant period, he being a domestic consumer under LTIA tariff is entitled to utilize 20% of the electrical energy for purposes other than domestic. In such circumstances, even if any additional connected load is detected or it is revealed that the petitioner is using power supply under domestic tariff for any other purpose namely commercial purpose, he is entitled for the said benefit provided under the tariff order. But a reading of the tariff order would show that, it only provides that domestic consumers shall be allowed to utilize electrical energy in some portion of their residence for their own use, for purposes other than domestic, as defined under LTI, and such connected load shall not exceed 20% of the total connected load in their premises or 500 watts. I am of the view that, the above provision is intended for consumers who are availing

power supply under LTI domestic tariff, who utilize a portion of their residential building for any purpose; other than domestic purpose; like a lawyer having his own office in a portion of the residential building; a qualified engineer/doctor/chartered accountant having a small office or consultation room in a small portion of the residential building, etc. In such circumstances, the petitioner is not legally entitled to claim any benefit under the aforesaid Clause of the Tariff order.

15. The learned counsel for the petitioner would then contend that the assessment of connected load made in Ext.P1 is without any legal basis and that, the actual connected load in the petitioner's premises is much lower than that found in Ext.R2 Mahazar. The above contention made by the petitioner cannot be accepted for the sole reason that, such a contention was not raised by the petitioner in Ext.P5 objection submitted against the provisional demand made in Ext.P5.

16. In the result, I find absolutely no grounds to interfere with the penal demand made against the petitioner in Ext.P7, which was confirmed by the appellate authority in Ext.P9. Therefore, the writ petition fails and the same is dismissed.

17. The learned counsel for the petitioner would submit

that if this Court is upholding the demand made by the Board, the petitioner may be permitted to remit the amount outstanding in monthly instalments. The learned counsel would also submit that, since the appellate authority in Ext.P10 has waived surcharge or interest accrued over the final assessment during the pendency of the appeal, the same has to be extended during the pendency of this writ petition.

A reading of Ext.P10 order passed by the appellate authority would show that, the waiver of surcharge or interest during the pendency of the appeal was granted by the appellate authority while issuing Ext.P10. In such circumstances, I find it appropriate to grant the very same benefit to the petitioner during the pendency of this writ petition. Further, the petitioner is also permitted to remit the balance amount outstanding in three equal monthly instalments commencing from 12.08.2015.

No order as to costs.

SD/-
ANIL K. NARENDRAN,
JUDGE

JV