

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

WP(C).No. 21396 of 2010 (Y)

PETITIONER(S):

**M/S.ESSAR TELECOM INFRASTRUCTURE (P) LTD.,
36/2624, FIRST FLOOR,
CHERAMANGALATHU HOUSE, SHENOY ROAD, COCHIN-682 017,
REPRESENTED BY ASSISTANT MANAGER (LEGAL & ACQUISITION),
MR.BABU PATTATHANAM.**

**BY ADVS.SRI.SANTHOSH MATHEW
SRI.SATHISH NINAN**

RESPONDENT(S):

- 1. KERALA STATE ELECTRICITY BOARD,
VYDHYUDHIBHAVANAM, PATTAM, THIRUVANANTHAPURAM,
REP.BY ITS SECRETARY.**
- 2. THE DEPUTY CHIEF ENGINEER,
ELECTRICAL SECTION, K.S.E.B, TIRUR,
MALAPPURAM DISTRICT.**
- 3. THE ASSISTANT ENGINEER,
ELECTRICAL SECTION, KERALA STATE ELECTRICITY BOARD,
PONNANI, PONNANI P.O., MALAPPURAM DISTRICT.**
- 4. THE KERALA STATE ELECTRICITY,
REGULATORY COMMISSION, VELLAYAMBALAM,
THIRUVANANTHAPURAM, REPRESENTED BY ITS CHAIRMAN.**

R1-R3 BY ADV. SRI.RAJU JOSEPH (SR. SC)

SRI.K.T.PAULOSE, SC

R4 BY ADVS. SRI.P.NANDAKUMAR, SC

SRI.P.VIJAYAKUMAR, SC

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 21369 of 2010 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: PHOTOCOPY OF THE PERMISSION ORDER NO.B5/19352009/EIM
DTD.20.8.2009 ISSUED TO THE PETITIONER.

EXT.P2: PHOTOCOPY OF THE OWNERSHIP CERTIFICATE DTD. 9.1.2008 ISSUED TO
THE PETITIONER.

EXT.P3: PHOTOCOPY OF THE LETTER ISSUED TO THE PETITIONER BY THE
THIRD RESPONDENT.

EXT.P4: PHOTOCOPY OF THE FINAL BILL FOR A SUM OF RS.1.34.842/- ISSUED TO
THE PETITIONER.

EXT.P5: PHOTOCOPY OF THE BILL DATED 5.6.2010 FOR AN AMOUNT OF RS.2.13,303/-
ISSUED TO THE PETITIONER.

EXT.P6: PHOTOCOPY OF THE RECEIPT DTD.29.6.2010 ISSUED TO THE PETITIONER.

EXT.P7: PHOTOCOPY OF THE REPLY DTD.3.7.2010 FILED BEFORE THE
3RD RESPONDENT BY THE PETITIONER.

EXT.P8: PHOTOCOPY OF THE BOARD ORDER NO.B.O.(FB) NO.46/2003
(PIG.COM 4206/01 DTD.15.1.2003.

EXT.P9: PHOTOCOPY OF THE BOARD ORDER NO.DPCI/C-182/2007 NO.368/2008
DTD.8.7.2008 ISSUED BY 1ST RESPONDENT.

EXT.P10: TRUE COPY OF THE JUDGMENT DTD.10.2.2006 IN OP.NO.26408/2000
BEFORE THE HON'BLE HIGH COURT OF KERALA.

EXT.P11: THE PHOTOCOPY OF THE JUDGMENT IN R.P.NO.974/2006 IN
OP.NO.26408/2000.

EXT.P12: PHOTOCOPY OF THE INTERIM ORDER DTD.5.11.2009 IN
WP(C) NO.31481/2009 ON THE FILE OF THIS HON'BLE COURT.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

C.K. ABDUL REHIM, J.

W.P.(C)No.21396 of 2010

Dated this the 27th day of January, 2015

JUDGMENT

The petitioner company is a 'Telecom Infrastructure Provider' to whom an electric connection is provided in the premises of a 'Telecom Tower' at Ponnani, with consumer No.28454. Pursuant to an inspection conducted by the Anti Power Theft Squad (APTS) attached to the 1st respondent Board, in the said premises on 30/11/2007, the petitioner was imposed with the penalty to the tune of Rs.12,000/-, alleging unauthorised usage of additional load to the extent of 5KWA. According to the petitioner, the said amount of penalty was already remitted in the year 2007 itself. But later on, in the year 2010, the 3rd respondent had issued Exts.P3 letter and Ext.P4 bill requiring the petitioner to make payment of a sum of Rs.1,34,842/- being penalty on current charges(Energy charges) due for the period from 09/06 to 11/07 and fixed charges for the period from 07/06 to 11/06. Further,

Ext.P5 monthly bill was issued wherein the arrears of penalty was also demanded. It is challenging Exts.P3 to P5 this writ petition is filed.

2. Contention of the petitioner is that the assessment of the penalty was already finalised by the 3rd respondent pursuant to the inspection conducted on 30/11/2007. Therefore the 3rd respondent was not entitled in any manner to re-open the assessment of penalty or to revise the penal bill. The petitioner relies on the decision on this court in **Jomy Thomas Manjooran V. Kerala State Electricity Board (2013 (1) KLT 595)**, in support of the above contention. This court held that there is no statutory power conferred on the Assessing Officer enabling any reopening, revision or re-assessment, after issuance of final order of assessment. It is held that, once the Assessing Officer finalises the assessment, he become '*functus officio*' in the matter and it is for the appellate authority to look into correctness of the assessment. Unless there is any statutory power conferred on the Assessing Officer enabling reopening,

revision or re-assessment he is not competent to deal with the matter, after issuance of the final order of assessment. But on the case at hand, there is no clear evidence to show that the 3rd respondent had finalised the assessment as contemplated under Section 126 of the Electricity Act, 2003, pursuant to the inspection conducted, in the year 2007 itself. So also it is to be noticed that, even assuming that the penalty need to be imposed against the petitioner levying proportionate energy charges, it is not legally sustainable to impose such penalty without following the procedure contemplated under Section 126. Hence the demand issued under Exts.P3 to P5 cannot be sustained.

3. Heard Senior Counsel appearing on behalf of the respondents. It is pointed out that the petitioner had submitted detailed explanations before the 3rd respondent, objecting the impugned demand. It is contended that the 3rd respondent being the Assessing Officer is empowered to consider such objections and to take a final decision.

4. From the circumstances existing as mentioned above, this court is of the opinion that a direction for finalisation of the matter based on Ext.P7 objections would suffice to meet the ends of justice. It will be left open to the petitioner to contend before the 3rd respondent that any further assessment will be unsustainable and that the 3rd respondent cannot initiate any steps based on the audit objections for reopening or revising the assessment. However it is for the 3rd respondent to consider Ext.P7 as an objection submitted under Section 126, against an order of provisional assessment. The matter shall be finalised after affording an opportunity of personal hearing to the petitioner and on considering all the objections raised, including sustainability of such assessment. It is made clear that the petitioner will be at liberty to take all the contentions including challenge against the findings contained in the inspection and non preparation and supply of copy of any mahazar.

5. It is noticed that, by virtue of an interim order

of this court, re-connection of supply was directed, subject to condition of payment of 1/3rd of the amount under demand. It is submitted by learned counsel that the said amount was already deposited. Therefore the respondents are restrained from taking any further action for realisation of the balance amount, until the matter is finalised by the 3rd respondent in accordance with the directions contained herein above.

Needless to observe that the amount already paid shall be appropriated in accordance with the outcome of the decision, which will be taken in the matter.

**Sd/- C.K. ABDUL REHIM
JUDGE**

MJL