

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

WP(C).No. 22998 of 2010 (Y)

PETITIONER(S):

**BASE CORPORATION LIMITED, 1/743, 1/996,
KODUMBU AMSOM AND DESOM, PALAKKAD - 678551
REPRESENTED BY ITS DEPUTY REGIONAL SALES MANAGER
M.D.NAIR, S/O. OF C.PANKAJAKSHAN NAIR, AGED 49 YEARS.**

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENT(S):

- 1. THE KERALA STATE ELECTRICITY BOARD, REP.
BY ITS SECRETARY, VYDYUTHI BHAVANAM, PATTOM
THIRUVANANTHAPURAM.**
- 2. THE DEPUTY CHIEF ENGINEER, KERALA STATE
ELECTRICITY BOARD, ELECTRICAL CIRCLE, PALAKKAD.**
- 3. THE ASSISTANT ENGINEER, ELECTRICAL
MAJOR SECTION, ELAPULLY PALAKKAD.**
- 4. SENIOR SUPERINTEND, ELECTRICAL SECTION,
ELAPULLY, PALAKKAD.**

BY ADV. SRI.T.R.RAJAN,SC,K.S.E.B.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONERS' EXHIBITS

- P1: COPY OF THE MAHAZAR DATED 13/10/2008**
- P2: COPY OF THE PENAL BILL DATED 21/10/2008**
- P3: COPY OF THE ORDER DATED 8/1/2009**
- P4: COPY OF THE REQUEST DATED 20/10/2008 FOR ADDITIONAL LOAD**
- P5: COPY OF THE MEMORANDUM OF APPEAL DATED 15/3/2009**
- P6: COPY OF THE RECEIPT OF PART PAYMENT OF EXHIBIT P2 PENAL BILL**
- P7: COPY OF THE ORDER DATED 25/7/2009 OF THE R2**
- P8: COPY OF THE REVISED PENAL BILL DATED 26/6/10**
- P9: COPY OF THE BOARD ORDER DATED 7/2/08**
- P10: COPY OF THE JUDGMENT DATED 10/2/2006 IN OP.26408/00**
- P11: COPY OF THE JUDGMENT DATED 28/11/2006 IN RP.974/06 IN OP.26408/00**
- P12: COPY OF THE BOARD ORDER DATED 15/1/03**

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

C.K. ABDUL REHIM, J.

W.P.(C)No.22998 of 2010

Dated this the 12th day of February, 2015

JUDGMENT

Pursuant to an inspection conducted at the premises of the petitioner, wherein an electric connection having consumer No.5654 is provided under the respondents, penalty was imposed invoking Section 126 of the Electricity Act, 2003, as per Ext.P2 provisional bill. The petitioner submitted objection against the bill, which was heard and finalised by the 3rd respondent as per Ext.P3. Aggrieved by Ext.P3 the petitioner preferred appeal before the 2nd respondent under Section 127 of the Act. The appeal was disposed of through Ext.P7 order by directing re-computation of penalty on the basis of the finding that the un-authorised load detected was continuing only for a period of 6 months prior to the date of inspection and hence the back assessment should be limited to the period of 6 months. The 3rd respondent was directed to

issue revised bill on the basis of the said order. But while issuing the revised bill, apart from complying with the directions contained in the appellate order, various other amounts were also demanded in Ext.P8. It is aggrieved by Ext.P8 revised bill, this Writ Petition is filed.

2. Learned Standing Counsel appearing for the respondents conceded that the amounts demanded under Ext.P8 includes assessment of penalty for various other periods. Inclusion of such amounts in the revised bill was on the basis that usage of unauthorised additional load continued even after the inspection, and the additional load was regularised only on a later stage. Further it is pointed out that the re-computation of proportionate energy charges on the unauthorised additional load is also included.

3. It remains settled through a decision of this Court in **Jomy Thomas Manjooran v. Kerala State Electricity Board [2013 (1) KLT 595]** that the Assessing Officer is conferred with no power to reopen, revise or reassess any assessment of penalty, after

issuance of the final order of the assessment. So also it is to be noted that, imposition of penalty on a continued basis on the allegation that the unauthorised additional load continued in the premises cannot be accepted or sustained. Even if there occurred any continued usage of the unauthorised additional load, penalty can be imposed only after following the entire procedure contemplated under Section 126. Continued imposition of penalty under Ext.P8, under the guise of revising the original bill based on directions issued by the appellate authority, cannot be sustained in any manner.

4. Under the above mentioned circumstances, the Writ Petition is allowed and Ext.P8 is hereby quashed. The 3rd respondent is directed to revise the penal bill finalised under Ext.P3, by limiting the period of back assessment to 6 months as directed by the appellate authority in Ext.P7 order, after giving credit to the amounts already paid.

5. A fresh bill in this regard shall be issued by the 3rd respondent, within a period of 2 weeks from the date of

receipt of copy of this judgment. Balance if any due shall be permitted to be paid within two weeks of issuance of such revised bill. Needless to observe that, excess amount if any paid shall be refunded/adjusted.

Contention with respect to levy of proportionate consumption charges cannot be sustained in view of provisions contained in the Electricity Act, 2003 and the Kerala Electricity Supply Code 2005, as well as the Kerala State Electricity Board Terms and Conditions of Supply, 2005. Hence it is declared that no penalty can be imposed on the petitioner on the proportionate energy charges, based on the allegation of unauthorised additional load detected.

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