

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. 26701 of 2007 (D)

PETITIONER(S):

**LAL STEELS (P) LTD., VIII/627,NIDA
KANJIKODE POST, PALAKKOD-678 623
REPRESENTED BY ITS DIRECTOR SHRI-BHARAT S TANTIA**

**BY ADVS.SRI.T.M.SREEDHARAN (SR.)
SRI.V.P.NARAYANAN**

RESPONDENT(S):

- 1. THE DEPUTY CHIEF ENGINEER
ELECTRICAL CIRCLE, KERALA STATE ELECTRICITY BOARD
T.B.ROAD, PLAKKAD-14.**
- 2. THE SPECIAL OFFICER (REVENUE)
KERALA STATE ELECTRICITY BOARD, VAIDHYUTI BHAVAN
THIRUVANANTHAPURAM-695 004.**
- 3. THE KERALA STATE ELECTRICITY BOARD,
VAIDHYUTI BHAVAN , PATTOM, THIRUVANANTHAPURAM
REPRESENTED BY ITS SECRETARY.**
- 4. THE ASSISTANT EXECUTIVE ENGINEER (APTS)
ELECTRICAL SECTION, KSEB, KANJIKODE
PALAKKAD DISTRICT.**

**BY ADV. SMT.P.KRADHIKA, STANDING COUNSEL, KSEB
BY SRI.P.P.THAJUDEEN, STANDING COUNSEL, 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:**

APPENDIX

PETITIONER'S EXHIBITS:

- P1 : COPY OF THE APPLICATION IN APPENDIX I DATED 18.06.2004
SUBMITTED BY THE PETITIONER
- P2 TO P2(F): COPIES OF THE BILLS ISSUED BY THE 2ND RESPONDENT FOR THE
MONTH SEPTEMBER 2004 TO MARCH 2005
- P3 : COPY OF PROCEEDINGS DATED 08.04.2005 ISSUED BY THE 2ND
RESPONDENT
- P4 : COPY OF ADDITIONAL BILL DATED 08.04.2005 ISSUED TO THE
PETITIONER
- P5 : COPY OF APPEAL DATED 19.04.2005 SUBMITTED BY THE PETITIONER
BEFORE THE 1ST RESPONDENT
- P6 : COPY OF RECEIPT DATED 22.04.2005 FOR PAYMENT OF 1/3RD OF THE
DEMAND AMOUNTING TO RS.3,86,640/-
- P7 : COPY OF LETTER DATED 22.04.2005 ISSUED BY THE 2ND
RESPONDENT
- P8 : COPY OF PROCEEDINGS DATED 08.2007 PASSED BY THE FIRST
RESPONDENT
- P9 TO P9(C): COPIES OF BILLS FOR THE MONTHS OF APRIL 2005 TO JULY 2005
- P10 ; COPY OF PROCEEDINGS DATED 08.2005 PASSED BY THE FIRST
RESPONDENT
- P11 : COPY OF LETTER DATED 20.07.2005 SUBMITTED BY THE PETITIONER

RESPONDENTS' EXHIBITS:

//TRUE COPY//

P.A. TO JUDGE

JV

ANIL K. NARENDRAN, J.

W.P.(C) No.26701 of 2007

Dated this the 8th day of June, 2015

JUDGMENT

The petitioner is running an industrial unit at the Industrial Development Area, Kanjikode in Palakkad District. It is a consumer of electricity under HT tariff with Consumer Code No.31/3413 of the Electrical Section, Kanjikode. The total connected load in the petitioner's industrial unit was 490KVA with a contract demand of 500KVA. According to the petitioner, on 18.06.2004, Ext.P1 application was submitted for an additional connected load of 250KVA.

2. A reading of the writ petition would show that as the petitioner was consuming extra power for its industrial requirements, in excess of the sanctioned connected load, such excess consumption was being billed over and above the normal charges and the petitioner was asked to pay 50% more for the connected load above 500KVA, which is evident from Ext.P2 series of bills.

3. On 01.04.2005, the petitioner's industrial premises was inspected by the Anti Power Theft Squad (APTS) and it was issued with a proceedings dated 08.04.2005 of the 2nd

respondent demanding a sum of Rs.11,59,920/- in respect of 358KVA additional connected load detected in that inspection. The petitioner was issued with Ext.P3 notice, followed by Ext.P4 demand notice.

4. Challenging the demand made in Exts.P3 and P4, the petitioner filed Ext.P5 appeal before the 1st respondent. As a condition for entertaining Ext.P5 appeal, the petitioner remitted a sum of Rs.3,86,640/- towards 1/3rd of the penal demand made in Ext.P4, vide Ext.P7 demand notice, and the same was forwarded to the 2nd respondent alongwith Ext.P6 covering letter. After hearing the petitioner, the 1st respondent passed Ext.P8 order reducing penal demand to Rs.8,69,940/- and after deducting a sum of Rs.3,86,640/- remitted vide Ext.P7, the petitioner was directed to remit the balance amount of Rs.4,83,300/-. A reading of Ext.P8 order would further show that, the unauthorized additional connected load was regularized on 13.07.2005 by executing the agreement and the petitioner has also remitted service connection charges. It was in such circumstances, the penalty for unauthorized additional load was ordered to be levied at the rate of 1 1/2 times of the applicable tariff till regularization of the unauthorised additional load. Ext.P9 series of bills are those issued by the Board for the period

subsequent to regularization of additional connected load.

5. It is aggrieved by Exts.P3 and P8 orders, the petitioner is before this Court in this writ petition seeking writ of certiorari to quash those orders and seeking a writ of mandamus restraining the respondents from recovering any amount from the petitioner pursuant to the aforesaid orders. The petitioner has also sought a declaration that it is not liable to pay any penalty or penal charges for the consumption of electricity for a period of seven months prior to 01.04.2005 and also for the period from 01.04.2005 to 30.07.2005 and that the levy of penalty for the period after 13.07.2007 is illegal and unauthorized.

6. A counter affidavit has been filed on behalf of the respondents, contending that though the petitioner has submitted an application on 18.06.2004 for additional connected load of 250 KVA, there was system constraints and a lot of procedures have to be followed and thus agreement was executed for enhancement of connected load only on 13.07.2005. As the petitioner was consuming extra power for its industrial requirements in excess of the sanctioned connected load, additional connected load was billed alongwith the monthly bills in accordance with the statutory requirements. On 01.04.2005,

the petitioner's premises was inspected by APTS and in that inspection, additional connected load of 358 KVA was detected and a penal demand for Rs.11,59,920/- was issued vide Ext.P3 as per Section 126(6) of the Electricity Act, 2003. Later, power allocation was issued by the Chief Engineer (North), Kozhikode, on 08.06.2005 and agreement was executed on 13.07.2005. Hence, it is evident that, from September 2004 to March 2005, the petitioner was using unauthorized additional load. Since the additional connected load was sanctioned only on 13.07.2005, penalty has to be levied for the period upto the regularization of the additional connected load.

7. To the counter affidavit filed by the respondents, the petitioner has filed a reply affidavit reiterating its contentions in the writ petition.

8. I heard the arguments of the learned counsel for the petitioner and also the learned Standing Counsel appearing for the Kerala State Electricity Board.

9. The question that arises for consideration in this writ petition is as to the legality or otherwise of the penal demand made by the respondent Board in Ext.P3, which was confirmed in Ext.P8.

10. It is not in dispute that the sanctioned connected load in the petitioner's industrial premises with Consumer Code No. 31/3413 was only 490KVA, with a contract demand of 500KVA. The fact that the petitioner's premises was having additional connected load without any prior permission of the respondent Board is not in dispute. According to the petitioner, they have already made Ext.P1 application for additional power allocation of 250KVA and that application was pending consideration from 18.06.2004 onwards. But the respondent Board would contend that, though such an application was made on 18.06.2004, the additional power allocation could be granted only by 13.07.2005 due to system constraints and also due to the procedure involved in grant of additional connected load.

11. Whatever may be the reason for the delay on the part of the respondent Board in granting additional connected load, going by the provisions under the Terms and Conditions of Supply of Electrical Energy, which govern supply of electrical energy, a consumer cannot exceed the sanctioned connected load till his application for additional connected load is sanctioned by the respondent Board and the consumer has executed necessary agreement and paid the requisite fee/charges. Further, a consumer, especially a HT consumer like

the petitioner, is not supposed to use additional connected load without the prior sanction of the respondent Board as it may adversely affect or even damage the distribution system maintained by the respondent Board. Therefore, when it is not in dispute that, the petitioner had availed additional connected load without any prior approval or authorization from the respondent Board, the Board is fully justified in raising Ext.P3 penal demand against the petitioner.

12. A reading of Ext.P8 order passed by the 1st respondent would show that the penal assessment made in Ext.P4, at the rate equal to twice the tariff applicable was reduced to one-and-half times and the demand charge was refixed at Rs.8,69,940/-,. In Ext.P8, based on the materials on record, the 1st respondent came to the conclusion that the petitioner has used unauthorised additional connected load of 358 KVA without sanction from the Board. The aforesaid reasoning of the 1st respondent in Ext.P8 is neither perverse nor patently illegal.

13. In such circumstances, I find absolutely no grounds to interfere with the penal demand made in Ext.P8, which the petitioner is legally bound to pay as per Regulation 51 of the Terms and Conditions of Supply of Electrical Energy as well as the statutory provisions governing the field. In the result, the

challenge made in this writ petition against Ext.P8 fails and the writ petition is accordingly dismissed.

Then the learned counsel for the petitioner would submit that the petitioner may be granted an opportunity to pay the balance amount due in terms of Ext.P8 in equal monthly instalments. By order dated 07.09.2007, this Court has directed the petitioner to remit Rs.1,50,000/- within a period of three weeks as a condition for grant of stay against disconnection. Considering the facts and circumstances of the case, I deem it appropriate to permit the petitioner to remit the balance amount outstanding in terms of the demand made in Ext.P8 in three equal monthly instalments commencing from 01.07.2015 onwards. It is made clear that 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 proceed with further steps for recovery of entire amount.

JV

sd/-
ANIL K. NARENDRAN,
JUDGE