

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE B.P.RAY

THURSDAY, THE 7TH DAY OF MARCH 2013/16TH PHALGUNA 1934

WP(C).No. 23705 of 2008 (V)

PETITIONER:

**A.M. SHANAVAS, AGED 29 YEARS,
S/O. MAKKAR PILLAI, ANDATH HOUSE,
MEKKALADI.P.O,
KALADY.**

**BY ADVS.SRI.DINESH MATHEW J.MURICKEN,
SRI.P.V.BALAKRISHNAN.**

RESPONDENTS:

- 1. THE KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY THE CHAIRMAN, VAIDHUDHI BHAVAN,
THIRUVANANTHAPURAM.**
- 2. SENIOR ASSISTANT ENGINEER IN CHARGE,
ELECTRICAL SECTION NO.1, MALAYATTOOR.**
- 3. ASSISTANT ENGINEER, ELECTRIC SECTION,
MALAYATTOOR.**
- 4. DEPUTY CHIEF ENGINEER,
ELECTRICAL CIRCLE, PERUMBAVOOR.**

R1 TO R4 BY SRI.SAJEEVKUMAR K.GOPAL,S.C,K.S.E.B.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 07-03-2013, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

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J U D G M E N T

Since the petitioner has paid the entire amount, nothing remain to be adjudicated and the writ petition is disposed of accordingly.

07.03.2013

SD/-B.P.RAY, JUDGE

//TRUE COPY//

P.S.TO JUDGE

Msd.

V. CHITAMBARESH, J

WP(C) NO. 23705 OF 2008

Dated this the 28th day of May, 2015

JUDGMENT

Ext.P2 bill passed in terms of Section 126 of the Electricity Act, 2003 has been affirmed in appeal. Ext.P6 order in the appeal under Section 127 of the Electricity Act, 2003 inter alia states as follows:

“On examination of the statements of the petitioner and the Asst. Engineer and the records of the issue it is found that the said bill was issued consequent to illegal pilferage of electrical energy in the premises bearing Con. No. 5290. The photographs, the mahazar and records shows how the consumer indulged in illegal abstraction of electrical energy.”

2. There is no independent consideration of the issue of theft except merely making a passing reference to the photographs, the mahazar and the records. The petitioner relies on the judgment of acquittal in CC No. 11/2009 on the file of the court of the Additional District and Sessions Judge, North Paravur. The petitioner was the first accused therein in the criminal case charged for the offence of theft of electrical energy under Section 135 of the Electricity Act.

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3. It remains to be seen whether the said judgment is one on merits or whether the benefit of doubt has been extended to the accused. The impact of the acquittal in the criminal case has to be considered by the appellate authority in the appeal after remand. Moreover, the fourth respondent has no jurisdiction to consider Ext.P5 appeal in the light of **Muhammed Haji Vs. Kerala State Electricity Board [2014 (3) KLT 706]**.

4. I quash Ext.P6 order and direct the newly constituted appellate authority to hear Ext.P5 appeal afresh. The petitioner has admittedly paid the entire amount demanded pending the writ petition. The amount need not be refunded to the petitioner till final orders are passed in the appeal anew. The appellate authority shall reconsider the appeal after adverting to the judgment in C.C. No. 11/2009 with notice to the petitioner. The needful shall be done within a period of three months from the date of receipt of a copy of this judgment.

The Writ Petition is disposed of.

**V. CHITAMBARESH
JUDGE**