

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

MONDAY, THE 15TH DAY OF JUNE 2015/25TH JYAISHTA, 1937

WP(C).No. 25327 of 2009 (I)

PETITIONER:

**P.K.MUSTHAFFA, AGED 36, S/O.KUNJABDULLA,
BLUELINE INDUSTRIES, VI/190, INDUSTRIAL DEVELOPMENT
PLOT, ANGAMALY SOUTH - 683 573.**

BY ADV. SMT.SADHANA KUMARI ESWARI

RESPONDENTS:

- 1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY THE ASSISTANT ENGINEER
ELECTRICAL SECTION, ANGAMALI.**
- 2. KERALA STATE ELECTRICITY REGULATORY
COMMISSION, VIDYATT BHAVAN, PATTOM
TRIVANDRUM, REPRESENTED BY ITS CHAIRMAN.**

R1 BY ADV. SRI.P.P.THAJUDEEN, SC, K.S.E.B

R2 BY ADVS. SMT.SREEDEVI KYLASANATH, SC, KSER COMMISSION.

SRI.P.NANDAKUMAR,SC,KSEB REGULATORY COM

SRI.S.SREEKUMAR,SC,KSERC

SRI.ANEESH JAMES,SC,KSEB REGULATORY COMMISSION

SRI.S.SUJIN, SC, ELECTRICITY REGULATORY COMMISSION

R1- R2 BY ADV. SMT.P.K.RADHIKA-KSEB

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
15-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

DCS

WP(C).No. 25327 of 2009 (I)

APPENDIX

PETITIONER(S)' EXHIBITS

**P1 & P2 : COPY OF THE DEMAND NOTICE AND COPY OF THE SITE
MAHASAR**

P3 : COPY OF THE OBJECTION DATED 6.5.2009

P4 : COPY OF THE ORDER DATED 8.7.2009

P5: COPY OF THE DEMAND NOTICE DATED 9.7.2009

RESPONDENT(S)' EXHIBITS:-

**R4(a): TRUE COPY OF RELEVANT PART OF SCHEDULE OF TARIFF AND TERMS
AND CONDITIONS FOR RETAIL SUPPLY BY KSEB DATED 27.11.2007**

**R4(b) & R4(c): TRUE COPY OF THE GOVERNMENT ORDER G.O. (P) NO. 5/2005/PD
DATED 3.3.2005 AND TRUE COPY OF THE LETTER OF THE
COMMISSION DATED 29.11.2006**

/TRUE COPY/

P.A. TO JUDGE

DCS

V. CHITAMBARESH, J

W.P.(C). NO. 25327 OF 2009

Dated this the 15th day of June, 2015

JUDGMENT

It is now settled law that penal assessment can be on the basis of fixed charges as well as energy charges. The decision in **Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO) and Another v. Sri. Seetaram Rice Mill [(2012) 2 SCC 108]** is on the point. The petitioner has however a case that no appellate authority has been legally constituted.

2. An appellate authority in terms of Section 127 of the Electricity Act, 2003 is now constituted. This is pursuant to the decision in **Mohammed Haji v. Kerala State Electricity Board [2014(3) KLT 706]**. The petitioner is free to impugn Ext. P4 order in the appeal.

3. Any appeal filed within one month from today shall be dealt with within three months therefrom. The amounts if any deposited pursuant to the interim order in this writ petition shall be given credit to for deciding the statutory deposit. The coercive steps against the petitioner shall be put on hold for a period of four months.

The writ petition is disposed of.

**V. CHITAMBARESH
JUDGE**

DCS