

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

WP(C).No. 24866 of 2011 (G)

PETITIONER:

**MANAGER, BISHOP VAYALIL MEMORIAL
HOLY CROSS COLLEGE, CHERUPUNKAL.P.O, PALAI
PIN - 686 584.**

**BY ADVS.SRI.WILSON URMESE
SRI.JOHNSON K.KURIEN**

RESPONDENTS:

- 1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SEECRETARY, VYDHUTHI BHAVAN
PATTOM.P.O, THIRUVANANTHAPURAM - 695 004.**
- 2. THE ASSISTANT ENGINEER,
ELECTRICAL SECTION, KERALA STATE ELECTRICITY BOARD
KIDANGOOR.P.O, PIN - 686 523.**
- 3. THE KERALA STATE ELECTRICITY
REGULATORY COMMISSION, REPRESENTED BY ITS SECRETARY
VELLAYAMBALAM, THIRUVANANTHAPURAM - 695 010.**

**R, BY ADV. SRI.T.R.RAJAN,SC,K.S.E.B.
R3 BY ADV. SRI.S.SUJIN, SC, ELECTRICITY REGULATORY
COMMISSION
R BY SRI.ANEESH JAMES
R BY SRI.K.M.SATHYANATHA MENON,SC,KSEB**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 24866 of 2011

APPENDIX

PETITIONER'S EXHIBITS :

**EXHIBIT-P1- TRUE COPY OF THE INVOICE DATED 12/09/2011 ISSUED BY
THE 2ND RESPONDENT IN RESPECT OF CON. NO.10779.**

**EXHIBIT-P2- TRUE COPY OF THE ORDER DATED 28/05/2010 IN
W.A. NO. 650/2010**

RESPONDENTS' EXHIBITS NIL

//TRUE COPY//

PA TO JUDGE

ANIL K.NARENDRAN, J.

W.P.(C).No.24866 OF 2011

Dated this the 20th day of March, 2015

J U D G M E N T

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The petitioner is the Manager of Bishop Vayalil Memorial Holy Cross College, affiliated to the Mahatma Gandhi University, Kottayam. The College is having an electricity connection with Consumer No.10779 coming under the KSEB Electrical Section, Kidangoor. On implementation of Schedule of Tariff and Terms and Conditions for Retail Supply by KSEB, issued by the Kerala State Electricity Regulatory Commission, which came into force with effect from 1/12/2007, the petitioner's educational institution was classified under LT-VIIA commercial tariff, from LT-VIA tariff and the petitioner was issued with Ext.P1 demand notice dated 12.9.2011. It is aggrieved by the Schedule of Tariff and Terms and Conditions for Retail Supply by KSEB to the extent of classifying the self-financing educational institutions under LT-VIIA tariff and for other consequential reliefs the petitioner has approached this

Court in this Writ Petition.

2. By order dated 20.9.2011, this Court passed the following interim order

“There will be an interim order staying recovery of the difference in tariff between LT-6A/6B and LT-7A category pertaining to the period covered by Ext.P1 bill. The petitioner shall however, continue to pay energy charges at the rate applicable to LT-7A category subject to further orders.”

3. The question involved in this Writ Petition is as to whether private self-financing educational institutions are liable to be charged under LT-VIIA tariff, in distinction with private aided educational institutions, which are charged under LT-VIA tariff. The issue stands settled in favour of the petitioner, as per a Division Bench decision of this Court in **Bro. Joseph Antony Vs. K.S.E.B (2009 (3) KLT 1022)**. It is brought to my notice that, the above decision is under challenge before the Apex Court in various Special Leave Petitions filed by the KSEB, and the Apex Court had stayed operation of the said judgment. However, unless the legal

position is reversed, this Court is bound to follow the decision in **Bro. Joseph Antony's case (supra)**, in view of the principle laid down by this Court in **Abdu Rehiman Vs. District Collector, Malappuram (2009 (4) KLT 485)**.

4. The further challenge in this Writ Petition is against Extp1 demand notice whereby the petitioner was requested to make payment of arrears of electricity charges at enhanced rate, i.e., under LT-VIIA tariff. The question regarding liability of the petitioner for payment at enhanced rate will depend upon outcome of the decision of the Apex Court. In view of the stay granted by the Apex Court, I am not inclined to restrain the respondent Board from charging the petitioner under the enhanced tariff. This is because of the fact that, if ultimately the Apex Court upholds the change of tariff, the respondent Board will be put to prejudice. On the other hand, the petitioner can seek refund/adjustment if the decision is ultimately in favour of the consumers. But it is only just and proper to restrain the respondent Board from recovering the

arrears on the basis of the enhanced tariff, till the matter is ultimately decided by the Apex Court.

5. Therefore this Writ Petition is disposed of directing the respondents to keep in abeyance recovery of arrears demanded under Ext.P1 notice till ultimate decision is rendered by the Apex Court in the SLPs referred above. It is made clear that the respondents are free to charge the petitioner under LT VIIA tariff for continued consumption of energy. It is made clear that payments made under the enhanced tariff will be liable to be refunded/adjusted in case the Apex Court upholds the judgment in **Bro. Joseph Antony's case (supra)**. It is also made clear that the respondents will be entitled to recover the arrears, if the change of tariff is ultimately upheld by the Apex Court.

This Writ Petition is disposed of as above. No order as to costs.

sd/-

**ANIL K.NARENDRAN, JUDGE**

ps/21/3/2015