

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

WP(C).No. 27130 of 2009 (I)

PETITIONER :

**M/S.POOJA MILK FOODS PVT.LTD,
REG.OFFICE AT 33/283 D1, AMBEDKAR ROAD, VENNALA P.O.,
KOCHI-28, REP.BY ITS MANAGING DIRECTOR,
MOHAN JOSEPH VARGHESE, S/O.LATE T.O, VARGHESE
AGED 48, PRASANTHI NAGAR, EDAPPALLY, KOCHI-24.**

**BY ADVS.SRI.A.BALAGOPALAN
SRI.A.RAJAGOPALAN
SRI.M.S.IMTHIAZ AHAMAD
SRI.K.SANEESH KUMAR
SMT.KALA G.NAMBIAR**

RESPONDENTS :

- 1. THE KERALA STATE ELECTRICITY BOARD,
REP.BY ITS SECRETARY, VAIDYUTHI BHAVAN, PATTOM
THIRUVANANTHAPURAM.**
- 2. THE ASSISTANT ENGINEER,
OFFICE OF THE ASSISTANT ENGINEER,
ELECTRICAL SECTION, PALARIVATTOM.**
- 3. CONSUMERS GRIEVANCE REDRESSAL FORUM,
CENTRAL REGION, ERNAKULAM.**
- 4. STATE ELECTRICITY OMBUDSMAN,
THAANATH BUILDING, CLUB JUNCTION, POOKKATTUPADY ROAD
EDAPPALLY TOLL, KOCHI- 682 024.**
- 5. KERALA STATE ELECTRICITY REGULATORY
COMMISSION, REP.BY ITS SECRETARY, VELLAYAMBALAM
THIRUVANANTHAPURAM.**

**R1 TO R4 BY ADV. SRI.P.P.THAJUDEEN, SC, K.S.E.B
R5 BY ADV. SMT.SREEDEVI KYLASANATH,SC,KSER COMMN.**

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

WP(C).No. 27130 of 2009 (I)

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1 : TRUE COPY OF THE MAHAZAR PREPARED BY THE SUB ENGINEER, DATED 25.9.2008.**
- EXT.P2 : TRUE COPY OF THE NOTICE DATED 27.9.2008 ISSUED BY THE SECOND RESPONDENT ALONG WITH THE PROVISIONAL ASSESSMENT BILL.**
- EXT.P3 : TRUE COPY OF THE GAZETTE NOTIFICATION NO.2148 DATED 27.11.2007.**
- EXT.P4 : TRUE COPY OF THE OBJECTION SUBMITTED BY THE PETITIONER TO THE SECOND RESPONDENT DATED 30.9.2008.**
- EXT.P5 : TRUE COPY OF THE JUDGMENT PASSED BY THIS HONOURABLE COURT IN W.P(C) NO.29352/2008 DATED 7.10.2008.**
- EXT.P6 : TRUE COPY OF THE ORDER CGRF-CR/COMP.54/2008-2009 DATED 6.1.2009 PASSED BY THE THIRD RESPONDENT.**
- EXT.P7 : TRUE COPY OF THE ORDER PASSED BY THE FOURTH RESPONDENT IN P46/2009 DATED 19.6.2009.**
- EXT.P8 : TRUE COPY OF THE RELEVANT PAGES RELATING TO CHILLING PLANTS AND PROCESSING DAIRY OF THE SAID BOOK.**
- EXT.P9 : TRUE COPY OF THE BILL DATED 11.9.2009 ISSUED TO THE PETITIONER.**
- EXT.P10 : TRUE COPY OF THE LETTER DATED 18.9.2009 ISSUED BY THE SECOND RESPONDENT TOGETHER WITH THE PAYMENT SCHEDULE.**

RESPONDENT(S)' EXHIBITS :

- EXT.R2(a) : PHOTOCOPY OF THE CALCULATION STATEMENT PREPARED BY THE SECOND RESPONDENT.**

/TRUE COPY/

PA TO JUDGE

VS

ANIL.K.NARENDRA, J

W.P.(C) No.27130 of 2009

Dated this the 2nd day of February, 2015

JUDGMENT

The petitioner is a company registered under the Companies Act, and engaged in the process of receiving raw chilled milk, pasteurizing/processing, packing, storing and distribution of milk and milk products in the State of Kerala. The petitioner obtained electric connection from the first respondent Board and is a consumer under Electric Section, Palarivattom with consumer No.14360 having a connected load of 145 KVA under Low Tension IV (industrial) Tariff. The electrical energy consumed by the petitioner was being billed regularly under LT IV (industrial) Tariff from 1996 onwards.

2. On 25.9.2008, the Anti Power Theft Squad, Palakkad, along with the Sub Engineer of the Electrical Section concerned visited the petitioner's premises and made an assessment of the connected load. They prepared Ext.P1 Mahazar and going by the said Mahazar,

in the inspection conducted in the petitioner's premises misuse of electric energy was detected. Proceedings were initiated against the petitioner, which culminated in Exts.P6 and P7 orders. It was aggrieved by the said orders, the petitioner has approached this court seeking various reliefs, including a declaration that Ext.P2 notification dated 27.11.2007 issued by the Electricity Regulatory Commission is not applicable to the petitioner and it is not liable to pay the additional bill appended with Ext.P2 notice. The petitioner has also sought for a declaration that, the respondent Board had no authority to change the tariff from LT IV to LT VII A, as the petitioner is neither a diary farm nor a milk selling unit.

3. Today when the case was taken up for final hearing, the learned Standing Counsel for the respondent Board brought to my notice, the judgment of a Division Bench of this court in ***Kerala State Electricity Board others Vs. M/s KSE Ltd., Diary Division & another (2012 (1) KLJ 584)***. In the said judgment a Division Bench of this court held that, production and storing of

milk, ice-cream and other products will fall under industrial tariff and that maintaining a sales division for milk products will independently constitute a commercial activity for which commercial tariff is applicable.

Paragraph 5 of the judgment reads this.

"5. After hearing both sides, we dispose of the Writ Appeal by holding that the judgment of the learned Single Judge following the decision of the Regulatory Commission will apply so far as the chilling unit, packing unit as well as the manufacturing unit of milk and ice cream and other products. However, if the 1st respondent is engaged in marketing of the products and is maintaining a sales division, such activity will independently constitute a commercial activity for which applicable tariff could be charged. If any wholesale or retail sales outlet is maintained by the 1st respondent, which is a matter to be found out on verification at site, then it is for the Board to consider whether separate connection is called for the sales outlet whether it be LT or HT, and if there is sales unit, KSEB can charge commercial tariff whether under HT or LT. We make it clear that production and stocking of milk, ice-cream and other products will squarely fall under industrial tariff and only sales outlet will go under commercial tariff."

4. In view of the judgment of this court in **M/s Kerala State Electricity Board and others v. M/s K.S.E.Ltd., Dairy Division and another (2012(1)KLJ 584)**, this Writ Petition is disposed

of setting aside Exts.P6 and P7 orders and directing the 3rd respondent-Consumer Grievance Redressal Forum to reconsider the complaint filed by the petitioner, which was numbered as CGRF-CR/Comp.54/2008-09 dated 6.1.2009 with notice to the petitioner and dispose of the same in the light of the principle laid down in the judgment of this court in **M/s Kerala State Electricity Board and others v. M/s K.S.E.Ltd., Diary Division and another (2012(1)KLJ 584)** and pass appropriate orders, as expeditiously as possible, at any rate within a period of two months from the date of receipt of a certified copy of the judgment. Needless to say that any such order passed by the 3rd respondent should be with notice to the petitioner and also to the Assistant Executive Engineer concerned.

Sd/-
ANIL.K.NARENDRA
JUDGE

/TRUE COPY/

PA TO JUDGE

VS