

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

WP(C).No. 27088 of 2013 (I)

PETITIONER(S):

**P.A.BEEFATHU, AGED 58 YEARS,
PROPRIETOR, RAFI RUBBER WORKS, KUTTAMASSERY,
THOTTUMUGHOM P.O., ALUVA - 683 105.**

**BY ADVS.SRI.J.JULIAN XAVIER
SRI.FIROZ K.ROBIN**

RESPONDENT(S):

- 1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY
VYDHUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM
PIN - 695 004.**
- 2. DEPUTY CHIEF ENGINEER, KERALA STATE ELECTRICITY BOARD,
ELECTRICAL CIRCLE, PERUMBAVOOR, PIN - 683 108.**
- 3. EXECUTIVE ENGINEER, KERALA STATE ELECTRICITY BOARD,
ELECTRICAL DIVISION, PERUMBAVOOR, PIN - 683 108.**
- 4. ASSISTANT ENGINEER, KERALA STATE ELECTRICITY BOARD,
ELECTRICAL SECTION,
MUDICAL P.O., VAZHAKKULAM, PIN - 683 106.**

R, BY ADV. SRI.JAICE JACOB,SC,KERALA STATE ELECTRICITY BOARD

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Imp

APPENDIX

PETITIONER(S)' EXHIBITS

P1 : COPY OF THE STATEMENT ISSUED BY THE 4TH RESPONDENT.

P2 : COPY OF THE STATEMENT SHOWING FIXED CHARGES DEMANDED FROM THE PETITIONER DURING THE PERIOD FROM 5/2005 TO 9/2008 ISSUED BY THE 4TH RESPONDENT.

P3 : COPY OF THE BOARD ORDER BO(FB)NO.2164/2008 DTD.30.8.2008 ISSUED BY THE 1ST RESPONDENT.

P4 : COPY OF THE REPRESENTATION DTD.2.12.2008.

P5 : COPY OF THE JUDGMENT DTD.10.12.2008 IN WPC NO.36320/2008.

P6 : COPY OF THE CERTIFICATE ISSUED FROM TALUK INDUSTRIES OFFICE, ALUVA, DTD.22.12.2008.

P7 : COPY OF THE ORDER DTD.30.12.2008 ISSUED BY THE 3RD RESPONDENT.

P8 : COPY OF THE APPEAL/PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

P9 : COPY OF THE LETTER/ORDER DTD.24.11.2009 ISSUED BY THE 2ND RESPONDENT TO 3RD RESPONDENT.

P10: COPY OF THE REPRESENTATION DTD.28.5.2012 FILED BY THE PETITIONER BEFORE THE 4TH RESPONDENT.

P11: COPY OF THE ORDER DTD.25.1.2013 ISSUED BY THE 3RD RESPONDENT.

P12: COPY OF THE STATEMENT DTD.20.4.2013 ISSUED TO THE PETITIONER ON 24.9.2013.

P13: COPY OF THE CHART ISSUED BY THE 4TH RESPONDENT SHOWING THE DETAILS OF CONSUMPTION AND MONTHLY PAYMENT.

RESPONDENT(S)' EXHIBITS - NIL

//TRUE COPY//

PA. TO JUDGE

Imp

ANIL K. NARENDRAN, J.

W.P.(C) No.27088 of 2013

Dated this the 26th day of February, 2015

JUDGMENT

The petitioner is running an industrial unit which is a consumer under the fourth respondent with consumer No.5668. The connection to the said premise was given on 22.01.1986 under LT IV industrial tariff. The dispute, which is a subject matter in this writ petition is relating to waiver of minimum demand charges contemplated under Exhibit P3 Board Order dated 30.08.2008. Going by the said Board Order, the board has decided to extend cut off date for waiver of minimum demand charges in respect of closed industrial units/plantations specified in G.O.(Rt)No.35/07/PD dated 24.04.2007 for a further period up to 31.12.2008. Going by the said Board Order, the board has further decided to extend the benefit of waiver of fixed charges in respect of LT industrial units and plantations if they are re-opened on or before 31.12.2008.

2. Claiming the benefit of Exhibit P3 Board Order

the petitioner submitted P4 representation before the third respondent. Seeking disposed with Exhibit P4 representation the petitioner has approached this Court in WP(C) No.36320/2008. The said writ petition was disposed of directing the third respondent to consider and take a decision on Exhibit P3 representation in accordance with law within a period of two weeks from the date of production of a copy of this judgment.

3. Pursuant to the directions contained in Exhibit P5 judgment of this Court, the third respondent passed Exhibit P7 order by which the relief sought by the petitioner was declined. The said order passed by the third respondent was under challenge in Exhibit P8 appeal filed before the second respondent. The second respondent by Exhibit P9 Order remanded the matter back to the third respondent and the third respondent was directed to re-examine the matter in detail with reference to the relevant records. Pursuant to the said direction, the third respondent has issued Exhibit P11 order by which the petitioner's request for waiving fixed charge for the period from 4/2005 to 12/2008 has been

declined. Further waiver of fixed charges granted for the period from 28.01.2008 to 31.12.2008 has also been withdrawn. It is aggrieved by the said order passed by the third respondent, the petitioner is before this Court in this writ petition seeking a request of certiorari to quash Exhibits P7, P11 and P12, which is a consequential demand based on Exhibit P11, and seeking a declaration that the disconnection of power supply to the petitioner's industrial premises with consumer No.5668 under the fourth respondent is illegal in the light of the fact that an amount of Rs. 71,218 is due to the petitioner in the light of Exhibits P2, P3 and P4.

4. A counter affidavit has been filed by the respondents supporting the reasoning of the third respondent in Exhibit P11 and contending that, the third respondent has rightly rejected the claim made by the petitioner for waiver of fixed charges. The petitioner has also filed a reply affidavit to the counter affidavit filed by the respondents, reiterating the contentions raised in the writ petition.

5. I heard the arguments of the learned counsel

for the petitioner and also the learned Standing Counsel for the respondent board.

6. The sole issue that arises for consideration in this writ petition is as to whether the petitioner is entitled for the benefit of waiver of fixed charges contemplated under Exhibit P3 Board Order. The documents on records, indicate that there is serious factual disputes as to whether the industrial unit of the petitioner was functioning during the period for which she is claiming waiver of fixed charges. Though Exhibit P2 statement obtained by the petitioner under the Right to Information Act indicates that during the period from 5/05 to 9/08. The respondent board has demanded only a sum of Rs.1,620/- each towards fixed charges, except for the period 10/07, a reading of Exhibit P7 order passed by the third respondent as well as Exhibit P11 order passed by the very same respondent subsequent to the order of remand in Exhibit P9, would show that there are indications to the effect that the industrial unit of the petitioner had consumed electricity, which has to be ascertained on the basis of the records maintained by the

respondent Board. The resolution of such a factual dispute cannot be undertaken by this Court in exercise of the discretionary jurisdiction under Article 226 of the Constitution of India.

7. It is not in dispute that Exhibit P11 order passed by the third respondent is an appealable order against which the petitioner can move the appellate authority constituted under Section 127 of the Electricity Act. Though the second respondent was functioning as the appellate authority, a Division Bench of this Court in Writ Petition (C) No.24714/2004 and connected cases has directed the Government to notify an appellate authority as contemplated under Section 127 of the Act. Pursuant to the said judgment the Government by G.O.(P) No.34/2014/PD dated 15.10.2014 notified Sri. K.K.Unni, retired Chief Electrical Inspector, as the appellate authority to entertain the appeal filed by consumers under Section 127 of the Act. Therefore if the petitioner is aggrieved by Exhibit P11, the remedy available to him is to file an appeal against the same before the aforesaid appellate authority constituted vide Government Order

dated 15.10.2014.

8. In the said circumstances this writ petition is disposed of relegating the petitioner to the appellate authority constituted under Section 127 of the Act for challenging Exhibit P11 order passed by the third respondent. If the petitioner is filing a statutory appeal before the said appellate authority within two weeks from today, after complying with the statutory mandate of pre-deposit under Sub Section (2) of Section 127 of the Electricity Act, 2003, the appellate authority shall entertain the appeal and disposed of the same on merit, untrammelled by any observations contained in this judgment, after giving a reasonable opportunity of being heard to the petitioner and also to the Executive Engineer and Assistant Engineer concerned.

9. If any documents are relied on by the officials of the Board, the appellate authority shall ensure that a copy thereof or a relevant extract of such documents are furnished to the petitioner.

10. It is made clear that, if the petitioner has already complied with the condition imposed by this

Court in interim order dated 5.11.2013, by which she was directed to deposit a sum of Rs.25,000/- against the demand made in Exhibit P12 for restoring power supply, the deposit so made by the petitioner shall to be taken credit of while fixing the amount payable towards pre-deposit, under Subsection (2) of Section 127 of the Act.

11. Taking into consideration the fact that dispute is of the year 2008, I find it appropriate to direct the appellate authority, to consider and pass appropriate orders on the appeal to be filed by the petitioner, within an outer limit of three months, from the date of filing of the appeal.

Sd/-
ANIL K. NARENDRA
JUDGE

Imp

//TRUE COPY//

P.A. TO JUDGE

