

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT:
THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR
TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

WP(C).NO. 27777 OF 2015 (V)

PETITIONER(S) :

ABDUL RASHEED @ DR.A.R.BABU
MANAGING DIRECTOR
HEERA CONSTRUCTION COMPANY PVT.LTD., M.P. APPAN ROAD
VAZHUTHACAUD, THIRUVANATHAPURAM
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER
K.K. SUDHAKARAN, ASSISTANT GENERAL MANAGER
REGIONAL OFFICE, HEERA CONSTRUCTION COMPANY PTV.LTD
NATIONAL RESIDENCY, BANK JUNCTION, EDAPPALLY
KCHI-682 024

BY ADV. SRI.K.PRAVEEN KUMAR

RESPONDENT(S) :

1. THE KERALA STATE ELECTRICITY BOARD LIMITED
REPRESENTED BY ITS SECRETARY, VYDHUTI BHAVAN
THIRUVANANTHAPURAM-695 001

2. THE DEPUTY CHIEF ENGINEER,
ELECTRICAL CIRCLE
KERALA STATE ELECTRICITY BOARD LIMITED
ERNAKULAM-682 018

3. THE ASSISTANT ENGINEER
KERALA STATE ELECTRICITY BOARD LIMITED
ELECTRICAL SECTION, THRIKKAKARA, ERNAKULAM-682 021

4. THE SUB ENGINEER
KERALA STATE ELECTRICITY BOARD LIMITED
ELECTRICAL SECTION, THRIKKAKARA, ERNAKULAM-682 021

5. KERALA STATE ELECTRICITY APPELLATE AUTHORITY
CC-51/52, NEAR 110 KV SUB STATION, VYTTILA
KOCHI-682 019

6. STATE OF KERALA
REPRESENTED BY ITS SECRETARY, POWER DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM-695 001

BY GOVERNMENT PLEADER SMT.LILLY K.T
R BY SRI.JAICE JACOB,SC,KERALA STATE ELECTRICITY BOARD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
22-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1: TRUE COPY OF THE MAHAZAR DT. 6/5/15 ISSUED BY THE 4TH RESPONDENT

EXT.P2: TRUE COPY OF THE COVERING LETTER ISSUED BY THE 3RD RESPONDENT

EXT.P2(A): TRUE COPY OF THE PROVISIONAL BILL AND CALCULATION STATEMENT
ISSUED BY THE 3RD RESPONDENT

EXT.P3: TRUE COPY OF THE OBJECTION PREFERRED BY THE PETITIONER DT.
12/5/15

EXT.P4: TRUE COPY OF THE ORDER DT. 25/5/15 ISSUED BY THE 3RD RESPONDENT

EXT.P5: TRUE COPY OF THE APPEAL PREFERRED BY THE PETITIONER

EXT.P5(A): TRUE COPY OF THE STAY PETITION PREFERRED ALONG WITH THE
APPEAL

EXT.P5(B): TRUE COPY OF THE PETITION SEEKING TO EXEMPT THE PETITIONER
FROM PAYING THE 50% OF THE FINE AMOUNT FILED ALONG WITH THE APPEAL

EXT.P6: THE TRUE COPY OF THE JUDGMENT IN WP CNO 17246/2015 DT. 10/6/15

EXT.P7: THE TRUE COPY OF THE JUDGMENT IN WA NO 1255/15 DT. 25/6/15

EXT.P8: THE TRUE COPY OF THE COMMUNICATION SENT BY THE 3RD RESPONDENT
TO THE 5TH RESPONDENT

EXT.P9: THE TRUE COPY OF THE ORDER IN APPEAL NO. 300/2015 DT. 29/7/15
PASSED BY THE 5TH RESPONDENT

EXT.P10: THE TRUE COPY OF THE NOTICE DT. 9/9/15 ISSUED BY THE 3RD
RESPONDENT

RESPONDENT(S) ' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.27777 of 2015

.....
Dated this the 22nd day of September, 2015

J U D G M E N T

The petitioner is the Managing Director of a firm engaged in business of land development. Challenging Ext.P4 order whereby it was assessed to energy charges at an exorbitant rate, the petitioner preferred an appeal before the appellate authority under Section 127 of the Electricity Act, 2003. The petitioner had also challenged Ext.P4 bill before this Court which proceedings eventually culminated in Ext.P7 judgment in W.A.No.1255 of 2015 that relegated the petitioner to the alternate remedy under the Electricity Act, against Ext.P4 bill. The petitioner, therefore, approached the appellate authority and effected the statutory deposit of 50% of the amounts confirmed in Ext.P4 bill within the extended time that was permitted to the petitioner by the Division Bench of this Court in Ext.P7 judgment. Thereafter, the appellate authority passed Ext.P9 order wherein the payment of 50% of the amounts confirmed against the petitioner by Ext.P4 bill was taken as insufficient for the purposes of entertaining the appeal. It is under these circumstances, that Ext.P9 order, that dismissed the appeal preferred by the petitioner, and Ext.P10 consequential demand notice, have been impugned in the present writ petition.

2. I have heard the learned counsel for the petitioner and the learned Standing counsel for the respondent Board.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that, inasmuch as the petitioner had effected payment of 50% of the assessed amount in Ext.P4, within the extended period of time that was granted to him by the Division Bench of this Court in Ext.P7 judgment, the dismissal of the appeal by the appellate authority on the ground of non-compliance with the requirement of statutory pre-deposit cannot be legally sustained. Accordingly, I quash Ext.P9 order, as also Ext.P10 consequential order, and direct the 5th respondent appellate authority to consider the appeal preferred by the petitioner against Ext.P4 bill on merits and pass a fresh order in the matter after hearing the petitioner. The 5th respondent shall pass orders as directed within a period of one month from the date of receipt of a copy of this judgment.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns

