

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. 32330 of 2011 (M)

PETITIONER:

**THE UNIVERSITY OF KERALA,
REPRESENTED BY ITS REGISTRAR
THIRUVANANTHAPURAM-694034.**

**BY ADVS.SRI.GEORGE POONTHOTTAM,SC,KERALA UTY.
SRI.BECHU KURIAN THOMAS, SC, UNIVERSITY OF KERALA**

RESPONDENTS:

- 1. THE KERALA STATE ELECTRICITY BOARD,
VYDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM-695001
REPRESENTED BY ITS SECRETARY.**
- 2. THE ASSISTANT ENGINEER,
THE KERALA STATE ELECTRICITY BOARD
ELECTRICITY SECTION (TOWN), ALAPUZHA-688 001.**
- 3. THE SENIOR SUPERINTENDENT,
THE KERALA STATE ELECTRICITY BOARD
ELECTRICITY SECTION (TOWN), ALAPUZHA-688 001.**
- 4. THE KERALA STATE ELECTRICITY
REGULATORY COMMISSION, BARTON HILL, THIRUVANANTHAPURAM
REPRESENTED BY ITS SECRETARY-695 001.**

**R,R1-3 BY ADV. SRI.T.R.RAJAN,SC,K.S.E.B.
R4 BY ADV. SRI.S.SUJIN, SC, ELECTRICITY REGULATORY COMMISSION
R BY SRI.SAJEEVKUMAR K.GOPAL,SC,KSEB
R BY SRI.ANEESH JAMES,SC,KSEB REGULATORY COMMISSION**

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

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APPENDIX

PETITIONER(S) EXHIBITS

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| EXT.P1 | TRUE COPY OF THE ORDER NO.B.B/SHORT ASSESSMENT/2011-12
DATED 29.9.11. |
| EXT.P2 | TRUE COPY OF THE SHORT ASSESSMENT BILL DATED 29.9.11
ISSUED BY THE 3RD RESPONDENT. |
| EXT.P3 | TRUE COPY OF THE REQUISITION NO.ADV.A.VII.2.6723/2011
DATED 14.10.2011. |
| EXT.P4 | TRUE COPY OF THE ORDER NO.B.B./SHORTASSESSMENT/2011-12
DTD.4.11.2011. |

RESPONDENTS' EXHIBITS NIL

//TRUE COPY//

PA TO JUDGE

ANIL K.NARENDRA, J.

W.P.(C).No.32330 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 Registrar of University of Kerala. The institution is having an electricity connection with Consumer No.8956-4 coming under the KSEB Electrical Section(Town), Alappuzha. 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.P2 demand notice dated 29.9.2011. It is aggrieved by 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 6.12.2011, this Court passed the following interim order:

“There will be an interim stay of recovery of the difference in tariff between LT-6A and LT-7A category pertaining to the period covered by Ext.P2 demand notice. The petitioner shall however continue to pay electricity charges at the rates applicable to LT-7 A category until 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 Ext.P2 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.P2 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/24/3/2015