

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

WP(C).No. 36788 of 2007 (D)

PETITIONER:

**M.P.ANTONY, S/O.PAILY, MANAGING PARTNER
M/S.MANICKATHAN MODERN RICE, MILL
KURICHILAKODE, KODANADU (PO), PERUMBAVOOR
(MANICKATHAN HOUSE, THOTTUVA, KOOVAPADY (PO)
PERUMBAVOOR).**

**BY ADVS.SRI.BABU JOSEPH KURUVATHAZHA
SRI.T.KBIJU (MANJINIKARA)**

RESPONDENTS:

- 1. THE STATE OF KERALA, REP. BY ITS SECRETARY TO
POWER DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.**
- 2. THE KERALA STATE ELECTRICITY BOARD
REP. BY ITS SECRETARY, VYDYUTHI BHAVAN, PATTAM
THIRUVANANTHAPURAM.**
- 3. THE ASSISTANT ENGINEER
ELECTRICAL SECTION, KSEB, KOOVAPPADY (PO)
PERUMBAVOOR.**

**R2- R3 BY ADV. SMT.PK.RADHIKA, SC,KSEB
R1 BY GOVERNMENT PLEADER SRI.P.V.ELIAS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25-05-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

- P1 COPY OF THE INSPECTION MAHAZAR PREPARED ON 9.9.2007**
- P2 COPY OF THE NOTICE ISSUED BY THE 3RD RESPONDENT DATED 10.09.2007**
- P3 COPY OF PENAL BILL DATED 10.09.2007**
- P4 COPY OF THE PROCEEDINGS ISSUED BY THE 3RD RESPONDENT DATED 11.09.2007**
- P5 COPY OF THE OBJECTION SUBMITTED BY THE PETITIONER DATED 14.09.2004**
- P6 COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C) 27914//2007 dated 19.09.2007**
- P7 COPY OF THE ARGUMENT NOTES SUBMITTED BY THE PETITIONER**
- P8 COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT DATED 3.12.2007**
- P9 COPY OF THE NOTIFICATION ISSUED BY THE 1ST RESPONDENT DATED 3.3.2005 PUBLISHED AS SRO No.250/2005 (G.O.)(P)No.5/2005/PD**

RESPONDENTS' EXHIBITS

NIL

// TRUE COPY // P.A. TO JUDGE

SD

ANIL K. NARENDRAN, J.

W.P.(C) No.36788 of 2007

Dated this the 25th day of May, 2015

JUDGMENT

The petitioner is the Managing Partner of M/s.Manickathan Modern Rice Mill, an industrial unit engaged in 'Parboiled-Rice'. The petitioner's premises is having power supply with consumer No.13353 under the 3rd respondent. On 09.09.2007, the Anti Power Theft Squad attached to the Kerala State Electricity Board (hereinafter referred to as 'the Board') inspected the petitioner's premises. In the said inspection, certain irregularities were detected and the petitioner was issued with Ext.P1 inspection mahazar, which was followed by Ext.P2 notice of the 3rd respondent and Ext.P3 penal bill for Rs.12,74,340/-. Against the demand made in Ext.P3, the petitioner submitted Ext.P5 objection. Thereafter, the petitioner has approached this Court in W.P.(C). No.27914/2007 and the said writ petition was disposed of by Ext.P6 judgment, which reads thus:

“Petitioner's case is that even though petitioner remitted 50% of the provisional bill amount for restoring connection, petitioner wants to contest the bill and has

filed Ext.P5 objections against the provisional bill. Second respondent is therefore directed to consider the objections of the petitioner, hear the petitioner and finalise the bill. Since petitioner has paid fifty per cent there will be direction to the 2nd respondent not to disconnect supply or recover balance arrears until bill is finalised. If the petitioner has any grievance against the bill as finalised, petitioner can file appeal.”

2. Subsequent to Ext.P6 judgment, the 3rd respondent conducted a personal hearing and the petitioner submitted Ext.P7 arguments. Thereafter, the 3rd respondent issued Ext.P8 order confirming the penal demand made in Ext.P3. It is aggrieved by Exts.P2 and P3, and contending that Ext.P9 notification issued by the respondent Board designating the Deputy Chief Engineer of the Electrical Circles concerned as the appellate authority for the purpose of appeal under Section 127 of the Electricity Act, 2003 is illegal, the petitioner has approached this Court in this writ petition.

3. By order dated 18.12.2007, this Court granted a stay against disconnection for a period of one month on the petitioner remitting a further sum of Rupees One lakh within a period of two weeks. The said order of stay was extended until further orders on 22.06.2009.

4. During the pendency of the above writ petition, a Division Bench of this Court in W.P.(C).No.24714/2012 and connected cases, directed the Government to notify the appellate authority as contemplated under Section 127 of the Act and pursuant to the said judgment, the Government by G.O.(P). 34/2014/PD dated 15.10.2014 notified Sri K.K.Unni, retired Chief Electrical Inspector, as the appellate authority to entertain the appeals filed by the Consumers under Section 127 of the Act. Therefore, if the petitioner is aggrieved by Ext.P8, the remedy open to him is to file a statutory appeal before the appellate authority already notified vide Government Order dated 15.11.2014.

5. In such circumstances, without going into the merits of the rival contentions raised by the parties, this writ petition is disposed of relegating the petitioner to avail the statutory remedy of appeal against Ext.P8 before the appellate authority notified under Section 127 of the Act. If the petitioner is filing such an appeal within a period of three weeks from the date of receipt of a certified copy of this judgment, after complying with the statutory requirements under Section 127(2) of the Act, the said appellate authority shall dispose of that appeal, as

expeditiously as possible, at any rate, within a period of three months from the date of receipt of such an appeal, with notice to the petitioner.

6. It is made clear that while computing the amount required to be paid under Section 127(2) of the Act, credit shall be given to the amount, already paid by the petitioner, including a sum of Rupees One lakh paid pursuant to the interim order passed by this Court dated 18.12.2007.

7. If the petitioner complies with the statutory requirements under Section 127(2) of the Act, as directed above, coercive steps for recovery of the balance amount in Ext.P8 shall be deferred till the disposal of the appeal.

The Writ Petition is disposed of as above. No order to cost.

SD/-
ANIL K. NARENDRAN,
JUDGE

JV