

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

WP(C).No. 32398 of 2014 (Y)

PETITIONER(S) :-

DISTRICT PROGRAMME MANAGER,
ANERT NO. KM VIII 180(3), MAIN ROAD, GUDALAI
KALPETTA.P.O., WAYANAD-673121.

BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENT(S) :-

1. M.M.PAILY
BESIL NIVAS, GANDHI NAGAR, KAYINATTY
KALPETTA NORTH.P.O., WAYANAD DISTRICT-673121.
2. THE MANAGER, KODCO ENERGY INDIA PVT. LTD.,
ARAYIDATHUPALAM, MAVOOR ROAD, KOZHIKODE-673001.
3. THE CONSUMER DISPUTES RIDRESSAL FORUM
WAYANAD, KALPETTA-673121.
4. THE KERALA STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
THIRUVANANTHAPURAM-695001.

R1 BY ADV. SRI.A.V.JAMES
BY SR.GOVERNMENT PLEADER SRI.MOHAMMED SHAFI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS :-

EXT.P1. COPY OF THE COMMUNICATION DATED 24-1-2012 ISSUED BY THE DIRECTOR ANERT TO THE DISTRICT PROGRAMME MANAGERS.

EXT.P2. COPY OF THE LETTER ISSUED BY THE DIRECTOR ANERT DATED 7-1-2013.

EXT.P3. COPY OF THE GO (RT) 62/2014/PD DATED 20-2-2014.

EXT.P4. COPY OF THE APPLICATION DATED 8-3-2012 SUBMITTED BY THE 1ST RESPONDENT ALONG WITH ANNEXURE.

EXT.P5. COPY OF THE LETTER ISSUED BY THE DIRECTOR ANERT TO THE PETITIONER DATED 27-11-12.

EXT.P6. COPY OF THE LETTER ISSUED BY THE 1ST RESPONDENT TO THE DIRECTOR ANERT DATED 20-2-13.

EXT.P7. COPY OF THE LETTER ISSUED BY THE DIRECTOR ANERT TO THE 1ST RESPONDENT DATED 4-5-2013.

EXT.P8. COPY OF THE PROOF AFFIDAVIT FILED BY THE 1ST RESPONDENT IN C.C. 64/2013 DATED 4-10-13.

EXT.P9. COPY OF THE DEPOSITION GIVEN BY OP1 AND OP2 IN C.C. 64/2013 DATED 4-12-13.

EXT.P10. COPY OF THE PROOF AFFIDAVIT SUBMITTED BY THE PETITIONER, IN C.C. 64/13 DATED 21-2-14.

EXT.P11. COPY OF THE DEPOSITION GIVEN BY OPW1 AND OPW2 ON CROSS EXAMINATION IN C.C. 64/2013 DATED 22-2-14.

EXT.P12. COPY OF THE ORDER OF THE 3RD RESPONDENT IN C.C. 64/2013 DATED 5-4-2014.

EXT.P13. COPY OF THE MEMORANDUM OF APPEAL (277/2014) FILED BY THE PETITIONER BEFORE THE 4TH RESPONDENT.

EXT.P14. COPY OF THE JUDGMENT IN APPEAL NO. 277/2014 DATED 28-8-2014 OF THE 4TH RESPONDENT.

EXT.P15. COPY OF THE ORDER DATED 6-11-14 IN EP NO. 36/2014 IN C.C. 64/2013 OF THE 3RD RESPONDENT.

EXT.P16. COPY OF THE REGISTERED LETTER ISSUED BY THE PETITIONER TO THE 1ST RESPONDENT DATED 4-8-2014.

EXT.P17. COPY OF THE POSTAL ACKNOWLEDGMENT SIGNED BY THE FIRST RESPONDENT ACCEPTING EXT.P16 LETTER.

RESPONDENT(S)' EXHIBITS :- NIL

//TRUE COPY//

P.A. TO JUDGE

'CR'

THOTTATHIL B. RADHAKRISHNAN, J.

W.P (C) No.32398 of 2014

Dated this the 8th day of January 2015

J U D G M E N T

Heard the learned counsel for the petitioner and the learned counsel for the first respondent. Heard the learned senior Government Pleader also.

2. The petitioner is the District Programme Manager of Agency for Non-Conventional Energy & Rural Technology (ANERT), which is an institution entrusted with the task of implementing different projects, essentially identified as a capable monitor in the sector of Non-Renewable Energy. Subsidy facilities were extended by the Central and State Governments with the ultimate aim to augment utilization of solar energy as an effective alternative. The first respondent purchased certain solar energy receiving equipments for his use and installed them in his residence. It is not in dispute that the said work got done by the first respondent was entitled to subsidy support. Since such subsidy component

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was not released to his benefit, he moved the District Consumer Disputes Redressal Forum. A decision was issued by that Forum in his favour. The petitioner unsuccessfully challenged that decision before the Kerala State Consumer Disputes Redressal Commission under the Consumer Protection Act, 1986, the "Act", for short. Hence, this writ petition challenging the decision of the State Commission and the District Forum.

3. The Government of India formulated a scheme and evolved the Jawaharlal Nehru National Solar Mission. It is stated that the objective is to implement solar energy system throughout the country. There can be no two opinions as to the fact that solar energy is the perennial source to be looked forward to. In order to effectively carry forward the sensitization and implementation of use of solar energy and to put a system in place by providing appropriate infrastructure support and to enable people to access the necessary equipments to harvest solar energy, the Central Government and the State Government appear to be involved in providing subsidies under the scheme.

4. The role of ANERT is to make the payment of the subsidies from the funds entrusted to it to meet such expenditure. The Central Government and the State Government have to put the subsidy funds under the control of ANERT. However, hearing the case in hand, this Court cannot but record its apprehension that ANERT may turn to be 'INERT' by dysfunction of the conduit through which the subsidies have to flow into the hands of ANERT from the Central Government and the State Government in implementation of Jawaharlal Nehru National Solar Mission. I say so because, the materials on record disclose that while ANERT was attempting to do its best there is always back log of funds to be released to ANERT to honour the subsidy scheme. That might have been because of the overwhelming response of the common man to the solar energy support. But, when an offer is made and people proceed to accept the system under the impression that subsidy is available, the subsidies will have to be paid in time. This is primarily a matter for proper governmental mechanism to be done by the Central Government and the State Government to ensure that the subsidy amounts flow in time to ANERT.

5. When the end consumer is faced with the situation where the promised subsidy does not come, he is definitely entitled to seek legal remedies. The provisions available under the Act have to be meaningfully understood to include not merely a private supplier, but also the subsidy provider and facilitator, in a situation as the one in hand. This is more importantly so because, the extension of subsidy provisions and the facilities enabling the end consumer to enjoy such subsidy is intricately connected with the supply of the products by the private supplier. It is a cohesive mechanism through which the vendor and the subsidy provider have to stand together to answer the claim of the consumer. In this view of the matter, I have no hesitation to hold that the consumer, the first respondent herein, was within bounds to have invoked the jurisdiction of the District Forum under the Act to seek remedy. That authority was well within its jurisdiction in terms of the provisions of the Act to grant relief as has been done. The State Commission has also rightly affirmed that decision.

6. In the aforesaid view of the matter, notwithstanding the question as to whether the writ petition ought to be

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entertained or the writ petitioner ANERT could be relegated to the National Commission under the Act, having examined the merits of the case in hand as noted above, I find no ground to interfere with the impugned decisions or leave open any issue for ANERT to carry in an appeal to the National Commission. However, the person, who is the District Programme Manager of ANERT, cannot be mulcted with any personal liability to satisfy the orders of the District Forum and the State Commission.

In the result, this writ petition is dismissed, however clarifying that there is no personal liability on the person who is the District Programme Manager to discharge the debt.

It is hoped that this judgment will sound not only a word of caution but would drive home to the Central and the State Governments, the need for urgent steps to be taken to actively pursue the subsidy system which is enjoined to come through the Jawaharlal Nehru National Solar Mission and any other project in that regard.

The Registry will issue a copy of this judgment to the Assistant Solicitor General, who will ensure that it gains

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the attention of the appropriate Ministry in the Central Government. Issue a free copy to the State Government through the Senior Government Pleader, who will ensure that the matter gains the attention of the Chief Secretary to Government of Kerala for necessary follow up action as may be found necessary, on the subsidy issue.

**THOTTATHIL B. RADHAKRISHNAN
JUDGE**

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