

Manager Vs. Kseb

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Court : Kerala

Decided On : Jan-09-2013

Judge : Honourable Mr.Justice V.Chitambaresh

Appellant : Manager

Respondent : Kseb

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.CHITAMBARESH WEDNESDAY, THE 9TH DAY OF JANUARY 2013 19TH POUSHA 193 WP(C).No. 20645 of 2012 (E)

----- PETITIONER(S): ----- MANAGER M/S. NADAN SQUARE, PEROORKADA JUNCTION, PEROORKADA P.O. THIRUVANANTHAPURAM. BY ADVS.SRI.MOHAN JACOB GEORGE SMT.P.V.PARVATHI SMT.REENA THOMAS RESPONDENT(S): ----- 1. KERALA STATE ELECTRICITY BOARD REPRESENTED BY ITS CHAIRMAN THIRUVANANTHAPURAM-695 001.

2. DY.CHIEF ENGINEER, ELECTRICAL CIRCLE, (URBAN) THIRUVANANTHAPURAM-695 001.

3. SASANKAN NAIR (FORMER EXECUTIVE ENGINEER) KSEB OFFICE, POWER HOUSE ROAD, THIRUVANANTHAPURAM (TO BE REPRESENTED OR TO BE SERVED THROUGH THE EXECUTIVE ENGINEER) POWER HOUSE

ROAD, THIRUVANANTHAPURAM-695 001.

4. ASSISTANT EXECUTIVE ENGINEER, ELECTRICAL SUB DIVISION, VELLAYAMBALAM-695 006.

5. ASST.ENGINEER, KSEB, PEROORKADA, THIRUVANANTHAPURAM

005. BY ADV. SRI.P.SANTHALINGAM (SR.) BY ADV. SRI.S.SHARAN,SC,K.S.E.BOARD BY SRI.JAICE JACOB,SC,KERALA STATE ELECTRICITY BOARD THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-01-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: APPENDIX IN W.P.(C) No.20645 of 2012 PETITIONER(S) EXHIBITS EXT.P1 COPY OF THE RECEIPT DATED 7 7/2007 ISSUED BY THE 1ST RESPONDENT RECEIVING THE APPLICATION. EXT.P2 COPY OF THE APPROVAL ORDER ISSUED BY THE ELECTRICAL INSPECTORATE, THIRUVANANTHAPURAM DATED 27 6/2007. EXT.P3 COPY OF THE LETTER DATE 9 1/2008 SUBMITTED TO THE THIRD RESPONDENT REQUESTING ORDERS FOR POWER ALLOCATION. EXT.P3 (a) COPY OF THE LETTER DATED =/2008 ADDRESSED TO THE THIRD RESPONDENT. EXT.P4 COPY OF THE MAHAZAR DATED 18 2/2008. EXT.P5 COPY OF THE BILL DATED 20 2/2008. EXT.P6 COPY OF THE LETTER DATED 28 2/2008 OF THE THIRD RESPONDENT. EXT.P7 COPY OF THE REPRESENTATION DATED 30 4/2008 SUBMITTED BY THE PETITIONER TO THE CHIEF ENGINEER. EXT.P8 COPY OF THE NOTICE DATED 7 5/2008 OF THE 5TH RESPONDENT. EXT.P9 COPY OF THE RECEIPT DATED 9 5/2008 EVIDENCING PAYMENT OF 50.OF THE AMOUNT BY THE PETITIONER. EXT.P10 COPY OF THE REPRESENTATION DATED 7 5/2008 SUBMITTED BY THE PETITIONER BEFORE THE DEPUTY CHIEF ENGINEER. EXT.P11 COPY OF THE COMMUNICATION DATED 11 5/2008 SENT BY THE DEPEUTY CHIEF ENGINEER. EXT.P12 COPY OF THE COMMUNICATION DATED 15 7/2008 OF THE 5TH RESPONDENT. EXT.P13 COPY OF THE NOTICE OF HEARING DATED 18 9/2008 ISSUED BY THE DEPUTY CHIEF ENGINEER. EXT.P14 COPY OF THE ORDER DATED 28 11.2008 SANCTIONING POWER ALLOCATION TO NADAN SQUARE. EXT.P15 COPY OF THE ORDER DATED 20 12.2008 OF THE DEPUTY CHIEF

ENGINEER. EXT.P16 COPY OF THE BILL DATED 2 1/2009. EXT.P16(a) COPY OF THE BILL DATED 8 1/2009 FOR RS.95,857/- EXT.P17 COPY OF THE BILL DATED 17 1/2009. W.P.(C) No.20645/2012 :

2. : EXT.P18 COPY OF BILL DATED 08 8/2007. EXT.P18(a) COPY OF BILL DATED 07 9/2007. EXT.P18(b) COPY OF BILL DATED 08 10/2007. EXT.P18(c) COPY OF BILL DATED 07 11/2007. EXT.P18(d) COPY OF BILL DATED 07 12/2007. EXT.P18(e) COPY OF BILL DATED 08 1/2008. EXT.P18(f) COPY OF BILL DATED 08 2/2008. EXT.P19 COPY OF BILL DATED 08 2/2008. EXT.P19(a) COPY OF BILL DATED 07 3/2008. EXT.P19(b) COPY OF BILL (RECEIPT) DATED 08 4/2008. EXT.P19(c) COPY OF BILL DATED 07 6/2008. EXT.P19(d) COPY OF BILL DATED 08 7/2008. EXT.P19(e) COPY OF BILL DATED 08 8/2008. EXT.P19(f) COPY OF BILL DATED 08 9/2008. EXT.P19(g) COPY OF BILL DATED 07 10/2008. EXT.P19(h) COPY OF BILL DATED 07 10/2008. EXT.P19(i) COPY OF BILL DATED 06 12/2008. EXT.P20 COPY OF THE BILL DATED 6 2/2009. EXT.P21 COPY OF THE RECEIPT ISSUED BY THE KSEB EVIDENCING THE PAYMENT OF EXT.P.20 BILL. EXT.P22 COPY OF BILL NO.16447 DATED 05 3/2009. EXT.P23 COPY OF THE ORDER DATED 18 3.2009 IN W.P(C)NO.8593/2009. EXT.P24 COPY OF THE ORDER DATED 21 8.2009 IN W.P(C)NO.8593/2009 EXTENDING THE STAY INTIL FURTHER ORDERS. EXT.P24(a) COPY OF THE ORDER DATED 25 1/2010 OF THIS HON'BLE COURT. EXT.P25 COPY OF THE JUDGMENT DATED 2 2/2012 IN W.P.(C)NO.8593/2009 . EXT.P26 COPY OF THE OBJECTIONS SUBMITTED BY THE PETITIONER BEFORE THE ASSESSING AUTHORITY ON 22.2.2012. W.P.(C) No.20645/2012 :

3. : EXT.P26(a) COPY OF THE SANCTION ORDER DATED 4 11/2009 OF THE ELECTRICAL INSPECTORATE. EXT.P27 COPY OF THE ASSESSMENT ORDER DATED 22 3/2012. EXT.P28 COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE APPELLATE AUTHORITY UNDER SECTION 12 OF THE ELECTRICITY ACT 2003.EXT.P29 COPY OF THE ORDER DATED 19 5/2012 DISMISSING EXT.P-28 APPEAL . EXT.P30 COPY OF THE VACANCY REMISSION ORDERS. EXT.P30(a) COPY OF VACANCY REMISSION ORDERS. EXT.P31 COPY OF BILL FOR THE PERIOD FROM 01 07.2006 TO 01.07.2007

ISSUED BY THE 4TH RESPONDENT. EXT.P31(a) COPY OF BILL FOR THE PERIOD FROM FEBRUARY 200 TILL APRIL 201 ISSUED BY THE 4TH RESPONDENT. EXT.P32 COPY OF THE NOTICE DATED 1 8.2012 THREATENING REVENUE RECOVERY PROCEEDINGS. RESPONDENTS' EXHIBITS NIL. //TRUE COPY// P.S. TO JUDGE. "C.R." V.CHITAMBARESH, J.

----- W.P.(C) No. 20645 of 2012 ----- Dated
this the 9th day of January, 2013

JUDGMENT

Can the Writ Petition challenging the imposition of penalty be pursued when once the petitioner has availed the benefit of the One Time Settlement ('OTS' for short) Scheme I heard Sri.Mohan Jacob George, Advocate on behalf of the petitioner and Sri.S.Sharan, standing counsel on behalf of the Kerala State Electricity Board ('KSEB' for short) in this writ petition.

2. The imposition of penalty under Section 126 of the Electricity Act, 2003 ('the Act' for short) for unauthorised use of electrical energy as affirmed in appeal is under challenge in this writ petition. The petitioner during the pendency of the writ petition however availed the benefit of the OTS Scheme which inter alia specified that 'settlement shall be done subject to the withdrawal of court cases, if any'. The petitioner ofcourse availed the OTS Scheme introduced by the KSEB without withdrawing the case by virtue of an interim order passed in the W.P.(C) No.20645
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2. writ petition. It is now conceded that a sum of ` 5,21,238/- was paid under the OTS Scheme in addition to one-half of the amount demanded as penalty as a condition precedent for filing the appeal under Section 127 of the Act.

3. No further demand by the KSEB exists as on the date of final hearing of the writ petition or will be made in future on this count since the liability of penalty stands settled under the OTS Scheme. The petitioner by virtue of the interim order in the writ petition enabling him to claim the benefit of the OTS Scheme without prejudice to his contentions in the writ petition has thus two options. They are: (i) to give up the benefit under the OTS Scheme of KSEB and argue the writ petition on merits;

or (ii) withdraw the writ petition as 'not pressed' in view of the settlement under the OTS Scheme.

4. The petitioner was not prepared to give up the benefit extended to him under the OTS Scheme and at the same time wanted to pursue the writ petition filed challenging the W.P.(C) No.20645 o

3. penalty for disposal on merits. This I am afraid cannot be countenanced since the writ jurisdiction under Article 226 of the Constitution of India cannot be invoked to adjudicate an issue already 'settled' between the parties under the OTS Scheme. I decline jurisdiction and dismiss the writ petition. No costs. V.CHITAMBARESH, Judge. nj.

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