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Aseena Vs. State of Kerala

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Court : Kerala

Decided On : Oct-05-2013

Judge : Honourable Mr.Justice Thomas P.Joseph

Appellant : Aseena

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM SATURDAY, THE5H DAY OF OCTOBER201313TH ASWINA, 1935 WP(C).No. 28717 of 2010 (L) ---------- PETITIONER : ---------- THE DIRECTOR, SAINTGITS COLLEGE OF ENGINEERING, KOTTUKULAM HILLS, PATHAMUTTOM P.O., KOTTAYAM. BY SRI.KURIAN GEORGE KANNANTHANAM,SENIOR ADVOCATE ADV. SRI.TONY GEORGE KANNANTHANAM RESPONDENT(S): ---------- 1. KERALA STATE ELECTRICITY BOARD, REPRESENTED BY ITS SECRETARY, VYDHUTHI BHAVAN, PATTOM P.O., TRIVANDRUM-695 004.

2. OFFICE OF THE ASST. ENGINEER, ELECTRICAL SECTION, K.S.E.B., KURICHY. R1 & R2 BY ADV. SRI.P.P.THAJUDEEN, SC, K.S.E.B SRI.T.R.RAJAN,SC,K.S.E.B. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON0510-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: sts WP(C)NO.28717/2010 APPENDIX PETITIONER'S

EXHIBITS: P1 COPY OF THE

ORDER
DATED198/2010 IN WP(C)NO.26233/10 OF THIS HON'BLE COURT P2 COPY OF THE BILL DATED39/2010 ISSUED BY THE K.S.E.B FOR AMOUNT RS.2,83,086/- P3 COPY OF THE BILL DATED39/2010 ISSUED BY THE K.S.E.B FOR AMOUNT RS.2,50,130/- RESPONDENT'S EXHIBITS: NIL /TRUE COPY/ P.A.TO.JUDGE sts C.K. ABDUL REHIM, J.

---------- W.P.(c) No. 28717 OF2010---------- DATED THIS THE5h DAY OF OCTOBER, 2013.

JUDGMENT

Question involved is as to whether the Private educational institutions are liable to be charged under LT VIIA tariff, in distinction with other educational institutions which are charged under LT VIA. The issue stands settled in favour of the petitioner as per a Division Bench decision of this court in Bro. Joseph Antony V. K.S.E.B (2009 (3) KLT1022. It is brought to my notice that the above decision is pending in challenge before the hon'ble Supreme Court in various Special Leave Petitions filed by the Kerala State Electricity Board, and the hon'ble Supreme Court had stayed operation of the said judgment. However, unless the legal position is reversed, this court is bound to follow the decision cited above, in view of the ruling of this court in Abdu Rehiman V. District Collector, Malappuram (2009 (4) KLT485. W.P.(c) No.28717/2010 -2- 2. Challenge in this writ petition is against Exts.P2 & P3 demands whereby the petitioner was requested to make payment of arrears of electricity charges under the enhanced rate. I take note of the fact that the question regarding liability for payment will depend upon the ultimate outcome of the decision of the hon'ble Supreme Court. In view of the stay granted by the hon'ble Supreme Court, I am not inclined to restrain the Board from charging the enhanced tariff. This because of the fact that, if ultimately the hon'ble Supreme Court upholds the change of tariff, the respondents will be put to prejudice. On the other hand the petitioner can seek refund/adjustment if the decision is ultimately in favour of them. 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 hon'ble Supreme Court.

3. Therefore the writ petition is disposed of directing the respondents to keep in abeyance recovery of arrears W.P.(c) No.28717/2010 -3- demanded under Exts.P2 & P3 till ultimate decision is rendered by the hon'ble Supreme Court in the SLPs referred above. However, it is made clear that the respondents are free to charge the petitioner under LT VIIA tariff for continued consumption of energy. It is further made clear that payment if any made at the enhanced tariff will be liable to be refunded/adjusted in case the hon'ble Supreme Court upholds the judgment in Bro. Joseph Antony's case (cited 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 hon'ble Supreme Court. The writ petition is disposed of as above. Sd/- C.K. ABDUL REHIM, JUDGE. AMG True copy P.A to Judge

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