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Elikutty Vs. the Assistant Engineer, K.S.E.B.

Elikutty Vs. the Assistant Engineer, K.S.E.B.

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Court : Kerala

Decided On : Nov-06-2013

Judge : Honourable Mr.Justice C.K.Abdul Rehim

Appellant : Elikutty

Respondent : The Assistant Engineer, K.S.E.B.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM WEDNESDAY, THE6H DAY OF NOVEMBER201315TH KARTHIKA, 1935 WP(C).No. 27237 of 2013 (D) ---------- PETITIONER(S): ---------- ELIKUTTY, AGED82YEARS, W/O.OUSEPH, KANNIKATT HOUSE, PANANGAD.P.O., CHEPPANAM. BY ADVS.SRI.A.X.VARGHESE SRI.A.V.JOJO. RESPONDENT(S): ---------- 1. THE ASSISTANT ENGINEER, KERALA STATE ELECTRICITY BOARD, ELECTRICAL SECTION, PANANGAD, PIN-682 506.

2. THE SUB ENGINEER, KERALA STATE ELECTRICITY BOARD, ELECTRICAL SECTION, PANANGAD, PIN-682 506. BY SRI.JAICE JACOB, SC, KERALA STATE ELECTRICITY BOARD. THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON0611-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: rvs/ WP(C).No. 27237 of 2013 (D) APPENDIX PETITIONER(S)' EXHIBITS : ---------- EXT. P1- TRUE COPY OF THE RECEIPT DATED307.2013. EXT. P2- TRUE COPY OF THE BILL

DATED69.2013. EXT. P3- TRUE COPY OF THE REMITTANCE MADE BY THE PETITIONER DATED249.2013. EXT. P4- TRUE COPY OF THE RECEIPT FOR THE IST INSTALLMENT DATED309.2013. EXT. P5- TRUE COPY OF THE RECEIPT FOR THE2D INSTALLMENT DATED3110.2013. EXT. P6- TRUE COPY OF THE SITE MAHAZAR DATED2610.2013. EXT. P7- TRUE COPY OF THE PROVISIONAL

ORDER
NO.BB/SN.SQUAD NO.3/13-14 DATED2810.2013. EXT. P8- TRUE COPY OF THE BILL DATED2810.2013 FOR AN AMOUNT OF RS.47,450/-. EXT. P9- TRUE COPY OF THE BILL DATED2810.2013 FOR AN AMOUNT OF RS.8000/-. EXT. P10- TRUE COPY OF THE OBJECTION SUBMITTED BY THE PETITIONER DATED111.2013. RESPONDENT(S)' EXHIBITS : ---------- NIL. /TRUE COPY/ P.A.TO JUDGE rvs/ "CR" C.K. ABDUL REHIM, J.

---------- W.P.(c) No. 27237 OF2013D ---------- DATED THIS THE6h DAY OF NOVEMBER, 2013.

JUDGMENT

Pursuant to an inspection conducted on 26-10-2013 at the residential premises of the petitioner, where electric connection is provided under Con. No.5839, Ext.P7 provisional order imposing penalty was issued by the 1st respondent. Alleging unauthorised extension to the extent of 1 KW, penalty was proposed to the tune of Rs.47,450/-. In Ext.P7 it is specifically mentioned that it is only a provisional assessment. But the petitioner was directed to remit the amount within 7 days of receipt of the order, otherwise it is threatened that the service will be disconnected without any further notice. Exhibit P8 bill was also issued demanding payment of the said amount on or before 04-11-2013. In Ext.P8 it is mentioned that it is a penal bill for unauthorised load, issued under Section 126 of the Electricity Act, 2003 (Amendment 2007). The petitioner W.P.(c) No.27237/2013 -2- submitted detailed objections against the provisional assessment, as per Ext.P10. But apprehending disconnection of supply, even before considering the objections and even before finalisation of the assessment, this writ petition is filed. The petitioner

was also issued with another bill, Ext.P9, demanding payment of compounding fee to the tune of Rs.8,000/-. The petitioner is also challenging the said demand.

2. Heard; counsel for the petitioner and Standing counsel appearing for the respondent.

3. Section 126 of the Electricity Act, 2003 contemplates a comprehensive procedure for finalisation of the assessment. Under sub section (1) of Section 126, if the assessing officer comes to the conclusion that the consumer or any other person is indulging in unauthorised use of electricity, he should provisionally make an assessment of the electricity charges payable by such person, to the best of his judgment. Sub section (2) of Section 126 provides W.P.(c) No.27237/2013 -3- that the provisional assessment should be served upon the person in occupation or possession or in-charge of the place, in the manner prescribed. Sub section (3) provides that the person upon whom such provisional assessment is served is entitled to file objections. It further provides that the assessing officer should pass a final order of assessment after affording a reasonable opportunity of hearing to such person.

4. From the procedure as enumerated above it is evident that, the assessment will become final only when the assessing officer passes the final order, after considering the objections and after affording opportunity of personal hearing. Then only the person against whom such assessment is made will become liable for payment of the amount of penalty. Sub section (4) of Section 126 provides an option to the person who is served with a provisional assessment to accept such assessment and to make deposit of the amount assessed, within 7 days of W.P.(c) No.27237/2013 -4- service of such provisional assessment. But as long as such an option is not exercised or when the person upon whom the provisional assessment is served has chosen to object the same, the assessment cannot be said to be completed/finalised, and no liability for payment can be fetched, until final order is issued.

5. In the case at hand, it is evident from Exts.P7 & P8 that even before affording an opportunity to file objections and even before conducting any personal hearing, the 2nd respondent demanded payment of the amount of penalty provisionally

assessed, within a stipulated date. Such a demand cannot be sustained under law and is liable to be quashed.

6. It is evident from Ext.P9 that on the basis of inspection the 1st respondent had issued demand for payment of compounding fee to the tune of Rs.8,000/-. Compounding of any offence of 'theft' is contemplated under Section 152 of the Electricity Act, 2003. There again it is an W.P.(c) No.27237/2013 -5- option left to the person against whom such accusation is made, either to face the prosecution or to compound the offence by paying the prescribed compounding fee. The respondents are not entitled to impose compounding fee in a unilateral manner, without there being any option expressed by such person. Therefore the demand under Ext.P9 is totally unsustainable.

7. Under the above mentioned circumstances the writ petition is partly allowed. The demand for payment of the amount of penalty provisionally assessed under Exts.P7 and P8 is hereby quashed. Exhibit P9 bill issued for payment of compounding fee is also quashed. The 1st respondent shall proceed further for finalsiatioin of the assessment on the basis of Ext.P7 provisional order, after considering objections submitted under Ext.P10 and after affording an opportunity of personal hearing to the petitioner, as contemplated under Section 126 (2) & (3). Final order of assessment shall be issued at the earliest W.P.(c) No.27237/2013 -6- possible, at any rate within a period of 3 weeks from the date of receipt of a copy of this judgment. Amount if any finalised in the assessment shall not be recovered from the petitioner within a period of 15 days from the date of service of the final order of assessment.

8. Needless to observe that the petitioner will be at liberty to seek appellate remedy as contemplated under Section 127 against such order, if she is aggrieved by the same. Sd/- C.K. ABDUL REHIM, JUDGE. AMG True copy P.A to Judge

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