

Sajan Varghese vs the Assistant Executive Engineer

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Court : Kerala

Decided On : Oct-29-2021

Judge : Honourable Mr.Justice S.V.Bhatti,Honourable Mr.Justice Basant Balaji

Appeal No. : WA/764/2017

Appellant : Sajan Varghese

Respondent : The Assistant Executive Engineer

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR.JUSTICE BASANT BALAJI FRIDAY, THE 29TH DAY OF OCTOBER 2021/7TH KARTHIKA, 1943 WRIT APPEAL NO.764 OF 2017 (AGAINST THE JUDGMENT DATED 6.2.2017 IN W.P.(C)No.13614/2016 OF HIGH COURT OF KERALA, ERNAKULAM) APPELLANT: SAJAN VARGHESE, MANAGING DIRECTOR, MANGALAM PUBLICATION (INDIA) PRIVATE LTD., S.H.MOUNT P.O., KOTTAYAM, PIN-686 006. BY ADVS. SRI.A.A.ZIYAD RAHMAN SRI.JOSEPH KURIAN VALLAMATTAM SRI.LAL K.JOSEPH SRI.V.S.SHIRAZ BAVA SRI.M.B.SOORI SRI.M.SASIDHARAN RESPONDENTS: 1 THE ASSISTANT EXECUTIVE ENGINEER,

ELECTRICAL SUB DIVISION, KOTTAYAM CENTRAL, KERALA STATE ELECTRICITY BOARD LIMITED-695 601 2 THE STATE ELECTRICITY OMBUDSMAN, CHARANGATTU BHAVAN NO.34/895, MAMANGALAM-ANJUMANA ROAD, EDAPPALLY, KOCHI-682 024. 3 THE CONSUMER GRIEVANCE REDRESSAL FORUM (SOUTH), KERALA STATE ELECTRICTY BOARD LIMITED, SOUTHERN REGION, VYDHYUDHI BHAVANAM, KOTTARAKKARA, PIN-691 506, REPRESENTED BY ITS CHAIRMAN BY ADVS. SRI.RAJU JOSEPH (SR.) SRI.N.SASIDHARAN UNNITHAN SRI.GEORGEKUTTY MATHEW, SC, KSEB THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON

29.10.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Basant Balaji, J This intra court appeal is filed challenging the

judgment dated 16.02.2017 in W.P.(C)No.13614 of 2016 by

the 3rd respondent. The 1st respondent herein approached this court by filing the above mentioned writ petition challenging Ext.P8 order of the 2 nd respondent herein, whereby the Ombudsmen has quashed the penal bill for Rs.33,11,236/- issued to the appellant herein. The appeal petition before the 2 nd respondent was filed by the appellant herein challenging the order of the 3 rd

respondent/Consumer Grievance Redressal Forum; which confirmed that the delay occurred to install the (CT/PT) Unit and the 'POD Meter' is not due to the fault of the 1st respondent herein and it was the responsibility of the appellant herein to provide metering equipments in the premises. Hence the 1 st respondent was given liberty

to invoke penal charges according to the gazette notification dated 27.9.2014, issued by the Kerala State Electricity Regulatory Commission.

2. The short question to be considered in this appeal is, whether there is any scope for interfering with the judgment of the learned single judge? Whereby the learned single has found that the delay in

installing the (CT/PT) Unit in the premises of the appellant was due to the laches of both the appellant as well as the Officials of the Board. The learned single judge interfered with the order of the Ombudsman and the penalty of 50% imposed on the appellant was reduced to 25%.

3. Heard learned counsel for the appellant, Sri Lal K. Joseph and learned Senior counsel Sri. Raju Joseph for the 1st respondent.

4. It is an undisputed fact that the appellant's un-authorised use of electricity was detected by the inspection of 'Anti Power Theft Squad' (APTS) on 12.11.2012. On the basis of inspection, the appellant

was required to enhance additional contract demand, for which he applied in December 2013. The contention of the appellant is that, before 18.04.2014, the time permitted by the Deputy Chief Engineer, the appellant had produced the test report of the (CT/PT) Unit from the transformers with a covering letter on 20.03.2014 itself. The counsel for the appellant argued that, the Board Officials failed to install the (CT/PT) Unit, and it is because of the said delay on the part of the Officials in the Board that he had to pay the penal charges.

5. The learned single judge came to the specific

conclusion that it is an admitted position that the

appellant did not produce (CT/PT) Meter, which was calibrated and tested before the Assistant Engineer, even though test reports were produced before him. The learned single judge also found that on receipt of Ext.R3(c), the first respondent has not sought for the (CT/PT) Meter from the appellant herein and so the meter was not affixed to the connection of the appellant and he alleged that the electricity energy was used by the appellant without any meter. The Electricity Board even though had power to disconnect the connection, for reasons unknown chose not to do so. Thus the learned single judge came to the conclusion that both the

appellant as well as the Board Officials are at fault for the delay in installing the (CT/PT) Unit in the premises of the appellant.

6. Another contention raised before the learned

single judge was that, on the basis of Clause(4) of Part-B of the Tariff Order, there could be no penal charges levied, if there was no defect in the meter. It was found that, the levy can be made even in case of replacement where the consumer trying to purchase and supply the meter. The time required for purchase and

supply of the meter as per Clause(4) of the Tariff Order

of High Tension and Extra High Tension is two months and if the consumer does not replace the same within two

months, the consumer will be charged 50% extra rates, applicable to him both demand and energy from the date of expiry of two months fixed for purchase and supply of the meter, till the date on which the meter is purchased and supplied by the consumer to the licence. Adverting to this, the learned single judge found that, levy of penal charges would be permissible in the present case, where the 3rd respondent had failed to supply the (CT/PT) Meter in time. The learned single judge having found that the delay occurred in replacement of the (CT/PT)

Meter was on the appellant as well as the Board Officials reduce the penalty to 25% extra over the prevailing rates. We have anxiously considered the submissions made by the counsel on both sides and perused the judgment of the learned single judge as well as the documents produced by both sides, and on going through the same, we are of the opinion that, the learned single judge was right in entering into a finding that the delay occurred is due to the laches on the part of the appellant as well as the lethargy on the part of the Board Officials. Hence we are of the opinion that, no interference is warranted on the judgment of the learned single judge and therefore the Writ Appeal is dismissed. Sd/- S.V.BHATTI, JUDGE Sd/- BASANT BALAJI, JUDGE ss