

**Abdul Nazer Vs. K.S.E.B.**

**Abdul Nazer Vs. K.S.E.B.**

**SooperKanoon Citation :** [sooperkanoon.com/718010](http://sooperkanoon.com/718010)

**Court :** Kerala

**Decided On :** Jan-20-2006

**Reported in :** AIR2006Ker203; 2006(1)KLT811

**Judge :** K.S. Radhakrishnan, Ag. C.J. and; K.T. Sankaran, J.

**Acts :** Indian Electricity Act, 2003 - Sections 56(2), 185(1) and 185(2)

**Appeal No. :** W.A. No. 1890 of 2005

**Appellant :** Abdul Nazer

**Respondent :** K.S.E.B.

**Advocate for Def. :** K.S. Anil, Adv.

**Advocate for Pet/Ap. :** K.K.M. Sherif,; P.M. Kunjimoideenkutty,; P.A. Mohammed  
A

**Disposition :** Petition dismissed

**Judgement :**

K.S. Radhakrishnan, Ag. C.J.

1. Writ Petition was preferred seeking a writ of certiorari to quash Ext.P7 order dated 18-3-2005 rejecting the petitioner's objection to the demand for energy charges for the period 1998-99 contending that the same is hit by Section 56(2) of

the Indian Electricity Act, 2003.

2. Petitioner was the Managing Partner of M/s. Soniya Enterprises, Chandiroor which was a small scale industrial unit engaged in the business of manufacturing of ice. Firm was a consumer of electricity having consumer No. 5246. Petitioner submits that the petitioner had sustained heavy loss in the business and accordingly he was constrained to wind up the operations of the unit during the year 1998 and also could not remit the electricity dues. Electricity supply was disconnected on 10-1-1999 due to non-payment of electricity charges and equipment were dismantled on 27-9-2001. Petitioner was served with demand notice dated 16-5-2002 directing him to pay an amount of Rs. 10,38,249/- on or before 17-6-2002, failing which it was ordered, appropriate recovery proceedings would be initiated against him. Petitioner had filed objection to the said notice and later approached this Court and filed OP.Nos. 3428 of 1998 and 18369 of 1994. Later he has also filed another Writ Petition No. 24317 of 2004 contending that the demand was hit by Section 56(2) of the Electricity Act, 2003. Various other contentions were also raised. This Court disposed of the Writ Petition on 18th January, 2005 directing the Board to consider his appeal petition dated 7-8-2004. Later Board issued Ext.P7 order dated 18-3-2005. Contention that the demand was hit by Section 56(2) was rejected. However, Board has given instructions to the Executive Engineer to withdraw the disputed demands and issue fresh bills limiting the claim for a period of six months prior to the dismantling of the service. Petitioner is aggrieved by Ext.P7 order rejecting his contention that demand was hit by Section 56(2) of the Indian Electricity Act.

3. Counsel appearing for the petitioner Sri. K.K.M. Sheriff submitted Board has no legal right to collect any amount beyond two years from the date of coming into force of the Indian Electricity Act, 2003. Counsel referred to Section 185(1) of the Indian Electricity Act, 2003 and contended that the notice should be deemed to have been issued under Sub-section (2) of Section 185 of the Act and hence Section 56(2) would squarely apply. Reference was also made to Clause 88 of the Electricity Supply Code. Counsel further submitted, Board has no legal right to demand exorbitant interest for belated demand. Counsel submitted demand of 24% interest is confiscatory. Counsel further submitted that he has already

deposited an amount of Rs. 5 lakhs and therefore there is no justification in recovering collection charges since amount was paid voluntarily and not collected through revenue recovery proceedings.

4. Counsel appearing for the Board refuted the contention and supported Ext.P7 order. Counsel submitted, Indian Electricity Act came into force, so far as State of Kerala is concerned, is on 10-12-2003. Demand notice was issued prior to the said date. Amount was also due prior to the coming into force of the Act. Further counsel submitted that Section 56(2) operates only prospectively and two year period is not applicable for the electricity dues for the period 1998-99.

5. Heard counsel on either side at length. A Division Bench of this Court in Southern India Marine Products Co. v. K.S.E.B. 1995(2) KLT 167 has taken the view that the relationship between the consumer and the Board is governed by the terms and conditions of the supply of electrical energy and therefore there is no question of limitation in reference to the arrears due. Liability to pay energy charges, in our view, is a continuing liability and the consumer cannot escape from that liability on the plea of limitation. The amount of energy charges was due to the Board prior to coming into force of the Indian Electricity Act, 2003. In our view, Section 56(2) of the Act would operate only prospectively. We may extract the said provision for easy reference.

56(2). Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

Legislature never wanted that provision to operate retrospectively. Under such circumstance Board is right in its contention that the amount due from the consumer prior to the coming into force of the Electricity Act, 2003 could be recovered by revenue recovery proceedings since no time limit has been prescribed. Section 56(2) of the Act states that no sum due from any consumer under this Section shall be recoverable after the period of two years from the date

when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity. Section 56(2) in our view is applicable only to amounts due after commencement of this Act. Under such circumstance we find no infirmity in Ext.P7 order. However, we are of the view, the demand of interest at the rate of 24% is exorbitant. We are therefore inclined to reduce the interest to 12%. The consumer is also not liable to pay collection charges if the amount is recovered otherwise than by revenue recovery proceedings. Rest of the order would stand. Writ Petition is accordingly dismissed, so also, the Writ Appeal.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**