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Court : Kerala

Decided On : Jun-15-2012

Reported in : 2012(3)KLT285

Judge : S. Siri Jagan

Appeal No. : WP(C).No. 5614 of 2007 (R)

Appellant : Sibi K. Thomas

Respondent : The Kerala State Electricity Board, Represented by Its Secretary and Others

Judgement :

The petitioner is a consumer of electricity under the Kerala State Electricity Board. The Anti Power Theft Squad of the Board inspected the electrical installation of the petitioner and prepared Ext.P1 mahazar. In the same, it was found that the seals of the meter were intact. But one of the three phases of the electricity meter was running in the opposite direction, resulting in non-recording of the actual consumption of electrical energy by the petitioner. Assuming that the wrong connection inside the meter happened at the time of installation in November 2002, Ext.P2 additional bill for electricity charges was raised on the petitioner for the period from 11/2002 to 12/2003. The petitioner filed an appeal against the

demand, which was dismissed by Ext.P3 order. It is under the above circumstances, the petitioner has filed this writ petition seeking the following reliefs:

"i) a writ of mandamus or other appropriate order or direction calling for the record leading to the issuance of Ext.P2, P3 and P4 and quash the same as illegal and unjust.

ii) issue an interim direction directing the 3rd respondent to keep in abeyance all proceedings in furtherance to Ext.P3 and P4 and not to disconnect the electric supply to consumer No.15257."

2. According to the petitioner, in so far as there is no allegation of any malpractice or theft of electrical energy by the petitioner it is unjust to saddle the petitioner with liability from the date of installation of the meter. The petitioner submits that the maximum the respondents can recover from the petitioner is only for six months prior to the date of inspection.

3. A counter affidavit has been filed by the respondents taking the stand that in so far as the seals were intact at the time of inspection by the APTS and there was no opening of the meter after its installation, it is abundantly clear that the wrong connection occurred at the time of installation of the meter itself and consequently the respondents are entitled to recover the electricity charges for the short recording of electrical energy from the date of installation of the meter.

4. I have considered the rival contentions in detail.

5. Under Section 26 (6) of the Indian Electricity Act, 1910, when the meter is faulty the maximum period for which arrears of electricity charge can be recovered is six months. But in the Electricity Act, 2003 which covers the period in question, such a provision is not there. Of course, in Section 24 (5) of the Kerala Electricity Supply Code, the licensee is entitled to recover electricity charges undercharged which does not stipulate any limitation. In respect of misuse of electrical energy, Section 126 (5) of the Electricity Act, 2003 stipulates that in cases of unauthorized use of electricity, it shall be presumed that such unauthorised use of electricity was

continuing for a period of three months immediately preceding the date of inspection in case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services, unless the onus is rebutted by the person, occupier or possessor of such premises or place. But in Regulation 50 (5) of the Kerala State Electricity Board Terms and Conditions of Supply, 2005, it is stipulated that if the assessing officer reaches the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place, and, if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of 12 months immediately preceding date of inspection. I am of opinion that, when for unauthorised use, if the period of unauthorised use is not certain, the period of 12 months is assumed as the period of such use it will be unjust to recover from the honest person in excess of that for the fault of the officers of the licensee. It is all the more so when the consumer is paying every month inspection charges to the licensee for inspecting the electrical installation to ensure that the electrical installation is working properly. If the officers of the Electricity Board were negligent in the matter of inspection of the electrical installation, it is totally unjust to saddle the consumer with the liability to pay large sums of money all of a sudden in a lump sum. In fact, there is no specific provision anywhere, which has been brought to my notice, for recovery of arrears of electricity charge in the case of fault in meter not attributable to the consumer. Regulation 24 of the Kerala Electricity Supply Code, 2005 does not clearly regulate such situation. It only relates to undercharging a consumer, which cannot be equated with recovery of charges in case of fault in meter. In view of the above circumstances, I feel that the petitioner is liable to pay arrears of electricity charges only for 12 months prior to the date of inspection, viz. for the period from January 2003 to December 2003. In so far as there is no fault on the part of the petitioner, the petitioner cannot be saddled with liability to pay surcharge also till the date of raising of the bill. Accordingly, the impugned orders are modified to that extent. A fresh bill shall be issued to the petitioner for arrears of electricity charges from January 2003 to December 2003 with surcharge for default in payment from 13.01.2004 only. Any amount paid by the petitioner already shall be given due

credit also. The petitioner shall be allowed to pay the amount so due in six equal monthly installments starting from the 1st day of the month immediately succeeding the date of service of the fresh bill as directed above.

The writ petition is disposed of as above.

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