

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 28TH NOVEMBER 2008 / 7TH AGRAHAYANA 1930

WP(C).No. 35141 of 2008(H)

PETITIONER(S):

M.S. PREMKUMAR,
MANAMEL HOUSE, PONATHKUNNU.P.O,
VIA IRINJALAKUDA, THRISSUR DISTRICT.

BY ADV. SRI.S.RAMESH BABU

RESPONDENT(S):

1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY,
VAIDHUTHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM.
2. THE EXECUTIVE ENGINEER,
ELECTRICAL DIVISION,
IRINJALAKUDA.
3. THE ASSISTANT ENGINEER,
ELECTRICAL SECTION, VELLANGALLUR,
THRISSUR DISTRICT.

BY SC SRI. P.P. THAJUDEEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 28/11/2008, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.M.JOSEPH, J.

WP.(C) No. 35141 of 2008

Dated this the 28th day of November, 2008

JUDGMENT

Petitioner challenges Exts.P3 and P4. A direction is sought to forthwith reconnect supply of electricity to the petitioner's residence having consumer No.10485.

2. Petitioner is a LT domestic consumer. An inspection took place on 24.11.2008 resulting in Ext.P1 mahazar being prepared. The purport of Ext.P1 mahazar is that there is theft. It is the case of the petitioner that he is orally informed that if he pays an amount of Rs.76,000/- at the rate of Rs.4000/- per kilo watt in terms of Section 152(1) of the Electricity Act, he could compound the offence. It is the case of the petitioner that in a threatening manner the Board compelled the petitioner to accept the offer of settlement and he paid Rs.76,000/- assuming that this will give a quietus to the issue. It is stated that the facts as stated would reveal that there is no question of any theft and that any domestic consumer faced with the onslaught of the officers of the Board barging into the residence and threatening untoward consequences including prosecution and arrest, the petitioner was compelled to remit the amount of Rs.76,000/-. Ext.P2 is a copy of the receipt. Ext.P3 is the proceedings of the Executive

Engineer dated 25.11.2008, by which it is ordered that the offences have been compounded and no other proceedings shall be initiated against the consumer in any criminal court. It is his case that he is not aware of the technicalities of the matter. It is stated however that petitioner came to be served with Ext.P4 reassessment bill dated 25.11.2008 calling upon the petitioner to pay a sum of Rs.2,37,495/- by way of provisional assessment for theft of electrical energy. Ext.P5 series are copies of previous bills from October, 2006 onwards.

3. I heard learned Senior Counsel for the petitioner Sri. P.Ravindran and the learned Standing Counsel Sri.P.P.Thajudeen.

4. Learned counsel for the petitioner would reiterate the circumstances in which the amount of Rs.76,000/- was paid. He would further contend that Ext.P4 is only a provisional assessment under Section 126 of the Electricity Act, 2003. Petitioner has been called upon to file his objection. He has a right to file objection. He has a right to be heard and the assessment has to be finalized and against the assessment he has a right of appeal under Section 127 after remitting 50% of the amount under Sub Section (2) of Section 127. In such circumstances, calling upon him to pay the entire amount under the cover of the provisional bill may not be legal or justifiable. He reiterated that it is only under compelling circumstances he came to pay Rs.76,000/- and he would contend that having paid

Rs.76,000/-, he cannot be called upon to pay a further sum as a condition for restoration of electric connection. He would submit that the purport of Section 135 read with Section 126 and 152 in the facts of this case would yield the following result. He has paid the amount even though he has a right of appeal and at present he and his family members are living in darkness and he may be restored with electric connection without complying with the demand. He further submits that even going by the third proviso to Section 135 (1A) of the Electricity Act it must be treated that he has paid the amount assessed and there is no liability to pay any further amount and any demand should await a final adjudication and also exhaustion of the right of appeal. Sri. P. Ravindran, Senior Counsel, also submits that the meter was actually faulty for 21 months and this can be seen from the bills delivered to the petitioner and Ext.P4 and in such circumstances it goes to show that there is no theft as such. He does not invite this court to pronounce on the validity of Ext.P1 mahazar.

5. Per contra, learned Standing Counsel would contend that being a clear case of theft, which in fact the petitioner has accepted by his act of compounding and paying a sum of Rs.76,000/- on 25.11.2008, that is the day following the date of inspection. If the petitioner wants reconnection the mandate of the statute and intention of the legislature is that he should pay off the amount as a condition for restoration of the connection. He

would further submit that mere payment of Rs.76,000/- which was only a condition for compounding cannot entitle the petitioner to restoration of connection without payment of the entire amount demanded in Ext.P4. Sri.Thajudeen points out that Ext.P4 has to be read in the context of the inspection conducted on 24.11.2008 and reference is also made to the said inspection in Ext.P4.

6. In order to appreciate this contention it is necessary to refer to the relevant portion of Section 135, which reads as follows:

“S.135(1A). Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

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Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.”

Section 152 of the Act provides for compounding of offences.

7. Going by Ext.P1 mahazar it appears to be a case of theft. That apart, it is to be noticed that petitioner has chosen to pay a sum of

Rs.76,000/- on 25.11.2008, that is not on the very same day as the inspection took place. The effect of compounding is as indicated in Ext.P3 order, namely that he cannot be prosecuted in a criminal court for the offence which otherwise would have attracted prosecution. This is in tune with Section 152 of the Electricity Act, under which in fact the compounding was permitted. When theft is detected the officer is empowered to immediately disconnect the connection by virtue of Section 135(1A). The third proviso however permits restoration of the connection upon the payment of the assessed amount or electricity charges. Assessment of electricity charges is the expression which is to be found in Section 126. Section 126(1) of the Electricity Act being relevant reads as follows:

“126. Assessment.- (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or uses, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.”

No doubt the assessment of electricity charges in the case of unauthorised use as contemplated in Section 126(1) is to be done following the

procedure. Section 126(1) provides for provisional assessment. An opportunity has to be afforded and thereafter it has to be finalized after considering any objection that may be filed by the party. Apparently Ext.P4 has been issued in consonance with the requirements of Section 126 as per which a provisional assessment has to be made. This entitles the petitioner no doubt, to file his objection, have the matter decided and an order has to be passed, which in turn entitles the consumer, if so advised to prefer an appeal under Section 127 after paying 50% of the amount and any other charges as mandated under the Rules. If he is so advised he can take further steps against the same. But the question that arises for my consideration is whether in a case where there is disconnection consequent upon detection of theft, the petitioner is entitled to restoration of the connection without payment of the amount assessed. The assessment of the amount is no doubt provisional. But the fact that this is provisional would not entitle the petitioner in my view to the restoration of the connection without paying the amount. This is because, the Section in no uncertain terms so declares under the third proviso. The right which the petitioner seeks in this writ petition is the issuance of an order compelling the respondents to restore the connection without payment of the amount demanded in Ext.P4. According to the learned counsel for the petitioner Ext.P4 is not a demand. But it is open to the petitioner to pay off the

amount and seek restoration in a case which is covered by Section 135(1A), wherein a case of theft is detected.

8. No doubt, the court must made an attempt to produce the result which will give effect to all the provisions of the Act. Section 126 and Section 135(1A) must both be given effect to. In my view, this can be done only in this manner. When there is a provisional assessment and when the connection is disconnected on account of theft, for getting reconnection, he may pay the amount and get reconnection without prejudice to his right to have the matter assessed and without prejudice to his right to show that he is not liable. In this manner both provisions can be given effect to. The only other question to be considered is what is the meaning of the words 'amount assessed' figuring in the third proviso to Section 135(1A). Learned Senior Counsel Sri.P.Ravindran would submit that actually the amount paid by him in a sum of Rs.76,000/- on 25.11.2008 and pursuant to which Ext.P3 order allowing compounding was passed must be treated as the amount assessed.

9. I am of the view that the said contention is without merit. The amount of Rs.76,000/- is an amount paid by the petitioner under Section 152, which is a specific provision which enables a consumer to avoid criminal prosecution in a criminal court and buy peace. This is abundantly clear in Ext.P3, which unambiguously say so also. Therefore this cannot

possibly be the amount which is referred to in the third proviso to Section 135(1A). On a perusal of the construction of the sentence and having regard to Section 126 of the Act, it would appear to me that it could possibly be a case of printer error. In other words, it should be assessed amount of electricity charges and the word 'or' after assessed amount does not appear to make any sense. No doubt learned Senior Counsel would say that it cannot be so. He would further submit that he has seen the original Act down loaded from website. At any rate, learned Senior Counsel is not able to point out any other provision under which there is an assessment of the amount, payment of which would entitle the petitioner to restoration of the connection.

10. Electricity is an intensely scarce resource of the Nation. The legislature became conscious of the need to deal with the offence of theft of electricity, which apparently had become prevalent. It must be treated to be conscious that the lack of electricity will produce considerable distress to the consumer. It was a conscious legislative value judgment, which is reflected in the provisions of Section 135(1A) when it decided to empower the officer to disconnect electricity supply upon detection of theft. Theft is separately dealt with under the Act as a special circumstance, which enable the authority to deal with it in the manner provided under the said provision. It may appear to be a harsh provision, but it is not for this court

to sit in judgment over the same and the said provision is not in challenge before me.

In this view of the matter, I decline the prayers sought for in this writ petition. It is dismissed.

(K.M. JOSEPH, JUDGE)

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