

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 18TH NOVEMBER 2008 / 27TH KARTHIKA 1930

OP.No. 2960 of 2000(B)

PETITIONER(S):

**DR. M. RAMAKRISHNAN,
SUPERINTENDENT,
MODERN HOSPITAL,
KOTTANAD,
PALAKKAD**

**BY ADV. SRI.T.P.KELU NAMBIAR (SR.)
SRI.P.G.RAJAGOPALAN
SRI.M.GOPIKRISHNAN NAMBIAR
SRI.SHIRAZ ABDULLA**

RESPONDENT(S):

- 1. STATE OF KERALA REPRESENTED BY THE
SECRETARY TO GOVERNMENT,
POWER DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.**
- 2. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY,
VAIDYUTHI BHAVANAM,
PATTOM,
THIRUVANANTHAPURAM.**
- 3. THE DEPUTY CHIEF ENGINEER,
ANTI POWER THEFT SQUAD (HQ),
VIDYUTHI BHAVANAM,
THIRUVANANTHAPURAM.**
- 4. THE ASSISTANT EXECUTIVE ENGINEER,
ELECTRICAL MAJOR SECTION, THRITHALA.**

**ADV. SRI.R.K.VENU NAYAR, SC, KSEB FOR R2 TO R4
SRI.P.SANTHALINGAM, SC, KSEB FOR R2 TO R4
SRI.C.K.KARUNAKARAN, SC FOR KSEB FOR R2 TO 4
GOVERNMENT PLEADER SMT. K.R. DEEPA.**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 18/11/2008, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

OP.No. 2960 of 2000

**ORDER ON C.M.P.NO.4860 OF 2000 IN O.P.NO.2960 OF 2000
CLOSED.**

18.11.2008

SD/- S. SIRI JAGAN, JUDGE.

- EXT.P1: COPY OF BILL, NO.018269, DTD 22.8.1998, ISSUED BY THE KERALA STATE ELECTRICITY BOARD, ELECTRICAL MAJOR SECTION, THRITHALA TO THE PETITIONER.**
- EXT.P2: COPY OF THE APPEAL 14.10.1998, SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.**
- EXT.P3: COPY OF THE ARGUMENT NOTES SUBMITTED BY THE PETITIONER.**
- EXT.P4: COPY OF THE ORDER NO.VIG, BV-5025/KKD/98, DTD 20.9.99, OF THE KERALA STATE ELECTRICITY BOARD.**
- EXT.P5: COPY OF REVISION DATED 13.9.1999, SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.**
- EXT.P6; COPY OF ORDER DATED 21.12.1999 OF THE 1ST RESPONDENT.**
- EXT.P7: COPY OF INVOICE NO.85406 ISSUED BY R4.**
- EXT.P8: COPY OF INVOICE NO.21586 ISSUED BY R4.**

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

O.P.NO.2960 OF 2000

Dated this the 18th day of November, 2008

JUDGMENT

The petitioner is a consumer of electricity from the Kerala State Electricity Board. The petitioner is running a hospital. The Anti Power Theft Squad inspected the premises of the petitioner and found that as against a sanctioned load of 15KW, the petitioner has been using 57.27 KW. For the excess 42 and odd KWs of unauthorised load used by the petitioner, proceedings were initiated for imposition of penalty under Regulation 42 of the conditions of supply of electrical energy and three times fixed charges and two times energy charges were imposed on the petitioner as penalty for using unauthorised additional load. The petitioner was served with Ext.P1 demand for an amount of Rs.1,87,696/- as penalty. The petitioner's appeal against that, before the 3rd respondent was rejected by Ext.P4 order of the Deputy Chief Engineer, APTS(HQ). The petitioner's revision before the Government was also rejected by Ext.P6 order. The

petitioner is challenging Exts.P1, P4 and P6 in this original petition.

2. The petitioner relies on the decision of the Division Bench in W.A.No.1231/2003, wherein the Division Bench held that it is not always mandatory that in every case of unauthorised additional load, the maximum penalty should be imposed and the authority should decide the issue taking into account the facts and circumstances of the case.

3. I have considered the rival contentions in detail.

4. I myself had considered a similar writ petition, in which the applicability of the judgment in W.A.No.1231/2003 was also considered. In the decision of **George Joseph V. K.S.E.B. and others [ILR 2008(4) Kerala 377]**, I had held that for unauthorised additional load, in the absence of any allegation of theft of electrical energy, penalty can be imposed only on fixed charges and no penalty is imposable on current charges. Following that decision, I hold that in this case also the petitioner is liable to pay only penalty in respect of fixed charges and not on energy charges. The impugned orders are quashed to that extent. The respondents are directed to issue

fresh bill to the petitioner including only the penalty on fixed charges and excluding penalty on energy charges. The petitioner should pay revised bills accordingly.

S. SIRI JAGAN, JUDGE

Acd

