(2013) 11 KL CK 0053

In the High Court Of Kerala

Case No : Writ Petition (C) No. 27237 of 2013

Elikutty APPELLANT

Vs

Kerala State Electricity Board RESPONDENT

Date of Decision : 06-11-2013

Acts Referred:

Citation : AIR 2014 Ker 5 : (2013) 4 KHC 622 : (2013) 4 KLT 721

Hon'ble Judges : C.K. Abdul Rehim, J

Bench : Single Bench

Advocate : A.X. Varghese and A.V. Jojo, for the Appellant; Jaice Jacob, for the Respondent

Judgement

C.K. Abdul Rehim, J.—Pursuant to an inspection conducted on 26.10.2013 at the residential premises of the petitioner, where electric connection is provided under Con. No. 5839, Ext. P7 provisional order imposing penalty was issued by the 1st respondent. Alleging un-authorised extension to the extent of 1 KW, penalty was proposed to the tune of Rs. 47,450/-. In Ext. P7 it is specifically mentioned that it is only a provisional assessment. But the petitioner was directed to remit the amount within 7 days of receipt of the order, otherwise it is threatened that the service will be disconnected without any further notice. Exhibit P8 bill was also issued demanding payment of the said amount on or before 4.11.2013. In Ext. P8 it is mentioned that it is a penal bill for un-authorised load, issued under S. 126 of the Electricity Act, 2003 (Amendment 2007). The petitioner submitted detailed objections against the provisional assessment, as per Ext. P10. But apprehending disconnection of supply, even before considering the objections and even before finalisation of the assessment, this Writ Petition is filed. The petitioner was also issued with another bill, Ext. P9, demanding payment of compounding fee to the tune of Rs. 8,000/-. The petitioner is also challenging the said demand. Heard; counsel for the petitioner and Standing counsel appearing for the respondent.

2. Section 126 of the Electricity Act, 2003 contemplates a comprehensive

procedure for finalisation of the assessment. Under sub-section (1) of S. 126, if the assessing officer comes to the conclusion that the consumer or any other person is indulging in un-authorised use of electricity, he should provisionally make an assessment of the electricity charges payable by such person, to the best of his judgment. Sub-section (2) of S. 126 provides that the provisional assessment should be served upon the person in occupation or possession or in-charge of the place, in the manner prescribed. Sub-section (3) provides that the person upon whom such provisional assessment is served is entitled to file objections. It further provides that the assessing officer should pass a final order of assessment after affording a reasonable opportunity of hearing to such person.

3. From the procedure as enumerated above it is evident that, the assessment will become final only when the assessing officer passes the final order, after considering the objections and after affording opportunity of personal hearing. Then only the person against whom such assessment is made will become liable for payment of the amount of penalty. Sub-section (4) of S. 126 provides an option to the person who is served with a provisional assessment to accept such assessment and to make deposit of the amount assessed, with in 7 days of service of such provisional assessment. But as long as such an option is not exercised or when the person upon whom the provisional assessment is served has chosen to object the same, the assessment cannot be said to be completed/ finalised, and no liability for payment can be fetched, until final order is issued.

4. In the case at hand, it is evident from Exts. P7 & P8 that even before affording an opportunity to file objections and even before conducting any personal hearing, the 2nd respondent demanded payment of the amount of penalty provisionally assessed, within a stipulated date. Such a demand cannot be sustained under law and is liable to be quashed.

5. It is evident from Ext. P9 that on the basis of inspection the 1st respondent had issued demand for payment of compounding fee to the tune of Rs. 8,000/-. Compounding of any offence of ''theft'' is contemplated under S. 152 of the Electricity Act, 2003. There again it is an option left to the person against whom such accusation is made, either to face the prosecution or to compound the offence by paying the prescribed compounding fee. The respondents are not entitled to impose compounding fee in a unilateral manner, without there being any option expressed by such person. Therefore the demand under Ext. P9 is totally unsustainable.

6. Under the above mentioned circumstances the Writ Petition is partly allowed. The demand for payment of the amount of penalty provisionally assessed under Exts. P7 and P8 is here by quashed. Exhibit P9 bill issued for payment of compounding fee is also quashed. The 1st respondent shall proceed further for finalisation of the assessment on the basis of Ext. P7 provisional order, after considering objections submitted under Ext. P10 and after affording an opportunity of personal hearing to the petitioner, as contemplated under S. 126(2) & (3). Final order of assessment shall be issued at the earliest possible,

at any rate within a period of 3 weeks from the date of receipt of a copy of this judgment. Amount if any finalised in the assessment shall not be recovered from the petitioner within a period of 15 days from the date of service of the final order of assessment. Needless to observe that the petitioner will be at liberty to seek appellate remedy as contemplated under S. 127 against such order, if she is aggrieved by the same.

