

(2014) 08 KL CK 0180

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 17912 of 2007

Hotel Mariya

APPELLANT

Vs

Kerala State Electricity Board

RESPONDENT

Date of Decision : 21-08-2014

Acts Referred:

Constitution of India, 1950 — Article 20
Electricity Act, 2003 — Section 126, 172, 172(d)

Citation : (2014) 4 ILR 495 : (2014) 4 KHC 314 : (2014) 4 KLT 267

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

Bench : Single Bench

Advocate : K. Gopalakrishna Kurup, Advocate for the Appellant; P.K. Radhika and M.A. Abdul Shukoor, Government Pleader, Advocate for the Respondent

Judgement

C.K. Abdul Rehim, J.—The petitioner is a partnership firm running a Hotel which is provided with an electric connection under respondents 1 to 3, with Consumer No. 6964. Pursuant to an inspection conducted at the premises where the electric connection is provided, penalty was imposed against the petitioner as per Ext. P7, demanding a sum of Rs. 6,38,072. The imposition of penalty was challenged before this court in an earlier Writ Petition filed, inter alia contending that the cause of action for the imposition of penalty had occurred after enforcement of the Electricity Act, 2003 and hence the imposition of penalty can only be under S. 126 of the said Act. This court had quashed Ext. P7 and directed the 2nd respondent herein to pass fresh orders, with notice to the petitioner. Accordingly the matter was reconsidered by the 2nd respondent with opportunity afforded to the petitioner and Ext. P10 order was issued. The contentions regarding applicability of S. 126 of the Electricity Act 2003 was repelled in the light of Ext. P11 Notification issued by the State Government in exercise of power vested under S. 172 of the said Act. It is challenging Ext. P10 as well as Ext. P12 consequential demand, this Writ Petition is filed. Contention of the petitioner is that the Electricity Act 2003 was brought into force in the country with effect from 10.6.2003, which is the "appointed day". S. 172(d) of the Act provides that

the State Government may by notification declare that any or all the provisions contained in the said Act shall not apply in the State for such period, not exceeding 6 months from the appointed day, as may be stipulated in the notification. Contention is that, even assuming that Ext. P11 is a Notification issued in exercise of power vested under S. 172(d), the same cannot have any retrospective effect. Since Ext. P11 Notification was issued only on 23.8.2003, provisions of the Electricity Act 2003 is to be deemed as existing in force between 10.6.2003 and 23.8.2003. Since the detection of the alleged irregularity as well as the imposition of penalty was within the said period, it should have been made only in accordance with S. 126 of the Electricity Act 2003. Since S. 126, as it stood then, permits imposition of penalty only at 1? times for a maximum period of 6 months, the penalty now imposed at a higher rate under Regulation 42 and 43 of the Conditions of Supply of Electrical Energy is not sustainable.

2. In the counter affidavit of the respondents it is contended that, by virtue of Ext. P11 notification the provisions of Electricity Act 2003 was not made applicable with respect to State of Kerala for a period of 6 months from the appointed day. Hence S. 126 can be applied only for irregularities detected after 10.12.2003. Therefore the impugned order of penalty is valid, is the contention.

3. Question arises as to whether Ext. P11 notification could have any retrospectivity. It remains settled that any legal provision having penal effect can be statutorily introduced only on a prospective basis, because of the constitutional restrictions contained under Article 20. Since provisions of the Electricity Act 2003 was brought into force with effect from the "appointed day" of 10.6.2003, operation of S. 126 from the said date onwards is explicit. The provisions of 2003 Act can be declared as not applicable within the State only by virtue of a notification issued under S. 172(d). Since such declaration was issued only on 23.8.2003, it is evident that S. 126 was in force at the time when the offence/unauthorised usage was detected. Hence this court finds merit in the contention that the penalisation can be made only under S. 126 of the Electricity Act 2003. A Division Bench of this Court in the decision in Pareeth Vs. Kerala State Electricity Board, held that the penalty that will visit upon an offender is determined with reference to the law that prevailed at the time when the offence is committed. Therefore the impugned proceedings needs interference to the extent of revising the penal bill in accordance with provisions contained in S. 126.

4. Under the above mentioned circumstances Exts. P10 and P12 are hereby quashed. The 2nd respondent is directed to issue revised bill computing the penalty in accordance with S. 126, which stood in force as on the date of inspection. Revised bill in this regard shall be issued if necessary after affording opportunity of personal hearing to the petitioner, at the earliest possible, at any rate within a period of one month from the date of receipt of a copy of this judgment.

5. The amounts already remitted by the petitioner shall be appropriated against

the revised demand. The petitioner shall be given 2 weeks time for payment of balance if any found due, from the date of service of such revised bill. On the other hand, if there is excess payment it shall be adjusted/refunded within a period of one month of the date of issuance of the revised bill. It is made clear that, since the impugned order of penalty is quashed and the respondent are directed to issue revised bill, no surcharge/interest will be leviable on the amount of penalty. But statutory interest will be leviable from the date stipulated for payment if there is any default.