

(2025) 10 KL CK 1289

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 6212 Of 2025

Malayalam Chemicals Pvt. Ltd

APPELLANT

Vs

State Of Kerala Represented By Its Secretary

RESPONDENT

Date of Decision : 08-10-2025

Acts Referred:

Citation : (2025) 10 KL CK 1289

Hon'ble Judges : Mohammed Nias C.P., J

Bench : Single Bench

Advocate : T.K.Sreekala, J.Julian Xavier, S.Parvathi, Nikitha Susan Paulson, Uthara Asokan, Anand Geo, K.I.Mayankutty Mather, B. Premod

Final Decision : Allowed

Judgement

Mohammed Nias C.P., J

1. The petitioner, M/s. Malayalam Chemicals (P) Ltd., a company incorporated under the Companies Act, 1956, was an HT industrial consumer under the Electrical Section, Irumpanam, with a contract demand of 500 KVA, and had commenced commercial production of Calcium Carbonate on 11.03.1996. Following default in paying the arrears of electricity charges, the petitioner's service connection was dismantled on 07.10.2006. Ext.P16 order dated 28.01.2025 issued by 3rd respondent shows that the petitioner had an outstanding arrears of Rs.27,27,744/- towards regular current charges for the consumption from 09/2000 to 04/2006, after adjusting Rs.7,57,624/- towards pre-92 tariff benefit, and Rs. 40,51,631/- towards penal charges assessed for theft of energy detected by the Anti-Power Theft Squad on 09.11.2005.

2. Both sides submit that the petitioner had cleared the liability as regards the penal charges on the allegations of theft, by remitting an amount of Rs.1,00,77,099/-, as seen from Exts.P11 and P11(a), consequent to the judgment in W.A. No. 1951 of 2022. For settling the electricity charges of Rs.27,27,744/-, the petitioner approached the Board claiming the benefit of the

one-time settlement scheme, which was rejected through Ext.P16 dated 28.01.2025. The reason was that, as per the judgment in W.A. No. 1951 of 2022, the Board had extended a lower interest rate for settling the penal charges, and therefore, the Board directed the petitioner to clear the undisputed arrears at 8% interest per annum.

3. Initially, Ext.P16 was challenged in this writ petition. An interim order was passed by this Court on 19.02.2025, which reads as follows;

“ Admit.

2. Learned Standing Counsel takes notice for respondent Nos 2 and 3. Learned Government Pleader take notice for the 1st respondent.

3. Having heard the learned Senior Counsel appearing for the petitioner and the learned Standing Counsel appearing for respondent Nos.2 and 3, there will be an interim order directing that, on the petitioner depositing the amount (which the petitioner will have to pay in terms of Ext.P16), the competent among respondent Nos.2 and 3 will issue a necessary ‘No Objection Certificate’ for the purposes of availing a new electricity connection. The amount shall be deposited within a period of one month from today. It is clarified that the deposit will be provisional and subject to further orders in the writ petition and subject to any contention taken in the writ petition.

It is also made clear that the deposit, as above, will not prevent the petitioner from seeking the benefit of any Amnesty Scheme, that may be introduced by the Board.”

4. Pending the writ petition, the Board came up with a new OTS scheme, Ext.P17 dated 30.04.2025, based on which this Court again passed an interim order on 04.06.2025, which reads as follows;

“ This Court, in its order dated 19.02.2025, apart from directing the petitioner to remit the disputed amount along with interest, held that the deposit, as above, will not prevent the petitioner from seeking the benefit of any Amnesty Scheme that may be introduced by the Board.

2. It is submitted by the learned Senior Counsel appearing for the petitioner that a Scheme is in place and that the petitioner had applied under the same.

3. In the said circumstances, without prejudice to the contentions of the parties, there will be a direction to the Board to consider the application submitted by the petitioner for availing the benefit of the Amnesty Scheme and appropriate orders passed thereon within three weeks from today.”

5. This Court was informed by the learned Counsel for the Board that the request of the petitioner for the amnesty scheme was under process, which was recorded in the order dated 25.06.2025. Thereafter, this Court directed the board to file a statement as to the steps taken under the order passed by this Court on 04.06.2025, as regards the application submitted by the petitioner for availing

the benefit of the amnesty scheme.

6. The Board, by Ext P20 order dated 28.07.2025, rejected the proposal submitted by the petitioner claiming OTS benefit on the ground that the petitioner had been extended the opportunity of settling the arrears on multiple occasions earlier, and was also awarded the reduced rate of interest, and therefore, the application submitted by the petitioner claiming OTS cannot be considered. The writ petition was amended to incorporate a challenge to the said order.

7. It is not in dispute that the petitioner had remitted an amount of Rs.70,90,453/-, which was inclusive of interest from 19.02.2025. Based on the above payment, the Board had also issued a No-objection certificate on 14.03.2025 to avail a fresh electricity connection. The petitioner had also paid the charges payable to the revenue authorities under the provisions of the Revenue Recovery Act. In view of the above, the only issue now remaining for consideration is the legality of Ext.P16 and P20 orders passed by the Board rejecting the request of the petitioner claiming the benefits of Ext.P17 OTS Scheme. 8. The learned Senior Counsel for the petitioner, Sri. V.V.Asokan, instructed by Sri. Julian Xavier argues that even the writ appeal judgment permitted the petitioner to opt under the OTS Scheme. This Court also, by the interim order referred to above, permitted the petitioner to apply for OTS, which was done within time. Ext.P17 OTS scheme refers to all types of arrears except those covered under the theft cases, and in the instant case, since the arrears were beyond 10 years, no interest was chargeable under the OTS scheme. There is no ineligibility in the Ext.P17 scheme that prevents the petitioner from claiming the benefits of the said scheme.

9. The counter affidavit of the Board also does not disclose any ineligibility of the petitioner under the Ext.P17 scheme. It is stated that the petitioner's request for consideration under the OTS-2025 scheme was rejected as the petitioner's liability had already been adjudicated upon in earlier proceedings, including W.A. No.1951 of 2022 and R.P. No.743 of 2024, wherein this Court had finally settled the issue of dues arising out of electricity theft, which is specifically excluded from the purview of any OTS scheme. It is contended that pursuant to those proceedings, the petitioner had been extended the benefit of the OTS- 2023 scheme to settle only the undisputed arrears amounting to Rs.27,27,744/-, on concessional terms with interest restricted to 4%. However, despite being granted multiple opportunities, including an extension of time till 31.03.2024, the petitioner failed to remit the amount within the stipulated or extended period.

10. It is pointed out that the petitioner's account had also been afforded substantial relaxations earlier, including the reduction of the applicable interest rate from 18% to 8%, which itself was an exceptional measure. The Board contends that such repeated indulgence cannot be extended to a chronic defaulter who has persistently defaulted even after availing multiple concessions, extensions, and settlements. It is also stated that the refund of electricity duty or

other components claimed by the petitioner cannot be effected in the absence of a specific Government order authorising such relaxation, since duty forms part of the statutory levy payable to the Government and not to the Board.

11. None of the contentions of the Board is based on the Ext. P17 scheme; in fact are against the conditions of the scheme, which permitted the settlement of cases involved in prior or pending litigations. The very purpose of the scheme itself was to restrict the accumulation of arrears by providing an effective mechanism for one-time settlement. The scheme was conceived in view of the alarming accumulation of pending arrears, which had become a constant cause of concern for KSEB Ltd., a substantial share of which remained tied up in litigations before various Courts, resulting in huge revenue arrears in the Board's accounts, including amounts practically unrecoverable by lawful means. Since judicial processes for resolving such disputes are time-consuming and often subject to appeals, remissions, and de novo proceedings, the recovery of dues remains indefinitely delayed, depriving the Board of its legitimate revenue. Taking a serious view of this predicament and drawing from the success of earlier OTS schemes that had effectively realised long-pending dues, the Board introduced the present OTS-2025 scheme to facilitate early recovery of arrears, particularly those entangled in litigation.

12. In the absence of any restrictions, in the Ext.P17 scheme, which prevents a consumer who has filed a case from getting the benefit of the scheme, the said contention of the Board cannot be accepted. The Board, having come up with the Ext.P17 scheme, cannot be permitted to add more conditions that are absent in the said scheme.

13. In any event, once an amnesty scheme is floated, the Board is strictly bound by the terms and conditions embodied therein. An amnesty scheme partakes the character of an offer extended to persons intending to avail its benefits, with the avowed objective of securing a settlement between the licensee and the consumer. Such a settlement is wholly governed by the terms and conditions of the scheme itself, and the court cannot be invited to either dilute or supplement the terms or conditions.

14. Acceptance of the offer, under an amnesty scheme, is in substance a settlement of the disputes between the parties on the express conditions set out in the scheme. The Court has no role in recasting or renegotiating those terms, or expanding the terms of the scheme. To contend otherwise would amount to reading into the amnesty scheme what has been consciously omitted or introducing a category not envisaged by it. Such an exercise would be nothing short of incorporating into the scheme elements alien to its structure, which is clearly impermissible in law.

15. It is not in dispute that the petitioner had earlier remitted the penal charges along with interest as directed by this Court. It is not disputed that the petitioner had made the payments within the time granted; it is not disputed that the

scheme provides for settling the OTS scheme even when court cases are pending.

16. Under such circumstances, the contention of the Board that the petitioner is not entitled to the benefit of Ext.P17 scheme cannot be accepted. Accordingly, Exts.P16 and P20 are liable to be quashed. There will be a direction to the respondent Board to calculate the amount payable by the petitioner in terms of the Ext.P17 scheme and the Ext.P18 application made by the petitioner. The excess amount paid by the petitioner will be refunded or adjusted against the future charges to be paid by the petitioner, if possible. This shall be done by the respondent Board within six weeks from the date of receipt of a copy of the judgment.

The impugned order is quashed, and the writ petition is allowed as above.