

(2013) 01 KL CK 0155

In the High Court Of Kerala

Case No : Writ Petition (C) No. 20645 of 2012

Manager, M/s. Nadan Square

APPELLANT

Vs

K.S.E.B. and Others

RESPONDENT

Date of Decision : 09-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity Act, 2003 — Section 126, 127

Citation : (2013) 1 ILR (Ker) 448 : (2013) 1 KHC 171 : (2013) 1 KLJ 422

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : Mohan Jacob George, Smt. P.V. Parvathi and Smt. Reena Thomas, for the Appellant; P. Santhalingam (Senior Advocate) and Sri. S. Sharan (S.C. for K.S.E.B.), for the Respondent

Final Decision : Dismissed

Judgement

V. Chitambaresh, J.—Can the Writ Petition challenging the imposition of penalty be pursued when once the petitioner has availed the benefit of the One Time Settlement ("OTS" for short) Scheme? I heard Sri. Mohan Jacob George, Advocate on behalf of the petitioner and Sri. S. Sharan, standing counsel on behalf of the Kerala State Electricity Board ("K.S.E.B." for short) in this writ petition. The imposition of penalty u/s 126 of the Electricity Act, 2003 ("the Act" for short) for unauthorised use of electrical energy as affirmed in appeal is under challenge in this writ petition. The petitioner during the pendency of the writ petition however availed the benefit of the OTS Scheme which inter alia specified that "settlement shall be done subject to the withdrawal of court cases, if any". The petitioner of course availed the OTS Scheme introduced by the K.S.E.B. without withdrawing the case by virtue of an interim order passed in the writ petition. It is now conceded that a sum of Rs. 5,21,238 was paid under the OTS Scheme in addition to one-half of the amount demanded as penalty as a condition precedent for filing the appeal u/s 127 of the Act.

2. No further demand by the K.S.E.B. exists as on the date of final hearing of the writ petition or will be made in future on this count since the liability of penalty stands settled under the OTS Scheme. The petitioner by virtue of the interim order in the writ petition enabling him to claim the benefit of the OTS Scheme without prejudice to his contentions in the writ petition has thus two options. They are:

(i) to give up the benefit under the OTS Scheme of KSEB and argue the writ petition, on merits;

or

(ii) withdraw the writ petition as "not pressed" in view of the settlement under the OTS Scheme.

The petitioner was not prepared to give up the benefit extended to him under the OTS Scheme and at the same time wanted to pursue the writ petition filed challenging the penalty for disposal on merits. This I am afraid cannot be countenanced since the writ jurisdiction under Article 226 of the Constitution of India cannot be invoked to adjudicate an issue already "settled" between the parties under the OTS Scheme:.

I decline jurisdiction and dismiss the writ petition. No costs.