(2015) 03 KL CK 0131

In the High Court Of Kerala

Case No : Writ Petition (C) No. 38239 of 2008 (B)

P.A. Nair — APPELLANT

Vs

Kerala State Electricity Board and Others — RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

Citation : (2015) 03 KL CK 0131

Hon'ble Judges : Anil K. Narendran, J.

Bench : Single Bench

Advocate : Wilson Urmese, for the Appellant; P.P. Thajudeen, T.K. Kunhabdulla and T.R. Rajan, SCs, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Anil K. Narendran, J.

1. The petitioner is the Chairman of Holy India Foundation School, an educational institution affiliated to the CBSE. The educational institution is having an electricity connection with Consumer No. 20731 coming under the KSEB Electrical Section, North Paravur. On implementation of Schedule of Tariff and Terms and Conditions for Retail Supply by KSEB, issued by the Kerala State Electricity Regulatory Commission, which came into force with effect from 1/12/2007, the petitioner''s educational institution was classified under LT-VIIA commercial tariff, from LT-VIA tariff and the petitioner was issued with Exts.P3 and P3(a) demand notices dated 19.12.2008 and 15.12.2008 respectively. It is aggrieved by Schedule of Tariff and Terms and Conditions for Retail Supply by KSEB to the extent of classifying the self-financing educational institutions under LT-VIIA tariff and for other consequential reliefs the petitioner has approached this Court in this Writ Petition.

2. By order dated 30.12.2008, this Court passed the following interim order:

"There will be an interim order as prayed for, on condition that the petitioner continue to pay electricity charges under LT VI A tariff. It is also clarified that no further payments under LT VIIA tariff shall be insisted upon, until further orders. The petitioner''s liability to pay under LT VIIA tariff would be subject to the result of this Writ Petition." 3. The question involved in this Writ Petition is as to whether private self-financing educational institutions are liable to be charged under LT-VIIA tariff, in distinction with private aided educational institutions, which are charged under LT-VIA tariff. The issue stands settled in favour of the petitioner, as per a Division Bench decision of this Court in Bro. Joseph Antony Vs. Kerala State Electricity Board, . It is brought to my notice that, the above decision is under challenge before the Apex Court in various Special Leave Petitions filed by the KSEB, and the Apex Court had stayed operation of the said judgment. However, unless the legal position is reversed, this Court is bound to follow the decision in Bro. Joseph Antony''s case (supra), in view of the principle laid down by this Court in Abdu Rahiman Vs. District Collector,   .

4. The further challenge in this Writ Petition is against Exts.P3 and P3(a) demand notices whereby the petitioner was requested to make payment of arrears of electricity charges at enhanced rate, i.e., under LT-VIIA tariff. The question regarding liability of the petitioner for payment at enhanced rate will depend upon outcome of the decision of the Apex Court. In view of the stay granted by the Apex Court, I am not inclined to restrain the respondent Board from charging the petitioner under the enhanced tariff. This is because of the fact that, if ultimately the Apex Court upholds the change of tariff, the respondent Board will be put to prejudice. On the other hand, the petitioner can seek refund/ adjustment if the decision is ultimately in favour of the consumers. But it is only just and proper to restrain the respondent Board from recovering the arrears on the basis of the enhanced tariff, till the matter is ultimately decided by the Apex Court.

5. Therefore this Writ Petition is disposed of directing the respondents to keep in abeyance recovery of arrears demanded under Exts.P3 and P3(a) notices till ultimate decision is rendered by the Apex Court in the SLPs referred above. It is made clear that the respondents are free to charge the petitioner under LT VIIA tariff for continued consumption of energy. It is made clear that payments made under the enhanced tariff will be liable to be refunded/adjusted in case the Apex Court upholds the judgment in Bro. Joseph Antony''s case (supra). It is also made clear that the respondents will be entitled to recover the arrears, if the change of tariff is ultimately upheld by the Apex Court.

This Writ Petition is disposed of as above. No order as to costs.