**(2009) 06 KL CK 0053**

**In the High Court Of Kerala**

**Case No :** WP (C) . No. 33726 of 2003 (M)

Smt. Thankamani Varghese APPELLANT

Vs

The Kerala State Electricity Board, The Executive Engineer, The Assistant Engineer and The Deputy Tahasildar, Revenue Recovery RESPONDENT

**Date of Decision :** 03-06-2009

**Acts Referred:**

**Citation :** (2009) 06 KL CK 0053

**Hon'ble Judges :** Antony Dominic, J

**Bench :** Single Bench

**Advocate :** K.A. Shamsudeen, for the Appellant; N.D. Premachandran, SC, for the Respondent

# Judgement

Antony Dominic, J.—The petitioner claims that she was the owner of 70 cents of land, which was assigned in favour of her husband in 1990. It is stated that, to that premises, for agricultural purposes, supply was being availed of and that the same was disconnected in June, 2000. Although, the land was assigned in favour of the petitioner''s husband, the petitioner continued as the consumer.

2. It is stated that out of the land so assigned to her husband, 20.100 cents was assigned by her husband to their daughter Ms. Mini Blaze Varghese, where she constructed a residential house. Although, she too had applied for electric connection, and the consumer number was also assigned, supply was not effected.

3. While so, on 04/08/2001, the petitioner submits that, the 3rd respondent inspected the premises and filed a criminal case against the petitioner alleging that she committed theft of energy and supplied the same to her daughter''s residential house. While the proceedings were pending, Ext.P2 was issued demanding an amount of Rs. 28,140/-. Ext.P1 mahazar also says that the theft as above, was from August, 2001 onwards. Later, the petitioner was issued Ext.P5 notice demanding payment of Rs. 28,140/- and requesting for its

remittance. By Ext.P6, on the ground that she had not received the bill as mentioned in Ext.P5, the petitioner sought a copy of the same.

4. At that stage, recovery proceedings were initiated by Ext.P7. Ext.P7 was challenged before this Court in WP(C) No. 24358/2003, and that writ petition was disposed of by Ext.P8 judgment, leaving it open to the petitioner to pursue the matter in appeal. In the meantime, she was also issued Ext.P9 demanding an amount of Rs. 40,800/-, which included Rs. 11,676/- towards surcharge. Aggrieved by Ext.P9, she filed Ext.P10, that was rejected by Ext.P11. It is in these circumstances, the writ petition has been filed seeking to quash Exts.P9 & P11.

5. Although, supply was disconnected in 2000 itself, fact remains that the equipments were dismantled only on 10/01/2003. It was in the meantime that supply, which was availed of by the petitioner as a consumer, was diverted and given to the house constructed by her daughter. On inspection, this was found to have happened from September, 2001, and it is on that basis, that the respondents have penalised the petitioner for 10 months.

6. Two questions arising in this context are whether the petitioner could be penalised for 10 months, and if so, what is the applicable tariff?

7. In so far as the applicable tariff is concerned, this question is no more in the controversy in view of the judgment of this Court in J.D.T. Islam Orphanage Committee v. Assistant Engineer KSEB 2007 (3) KLT 388. In that judgment, interpreting Regulation 42D, this Court held that penalty can be only on the basis of the respective tariff, which has been interpreted to mean that the tariff was applicable to the connection given. In this case, the connection originally given was for agricultural purposes. Though, diversion is to a domestic connection attracting higher tariff, in view of the law laid down in the aforesaid judgment, the respondents could have penalised the petitioner applying only the tariff as applicable to agricultural consumers. Since, in Exts.P9 & P11, penalty has been imposed applying domestic tariff, necessarily, Exts.P9 & P11 needs to be revised applying the tariff as applicable to agricultural consumers.

8. Then what remains is the period for which the petitioner could have been penalised. A reading of the impugned orders show that the penalty has been imposed for a period of 10 months. Clauses 42D & 43 restrict penalty for a period of six months with a rider that unless there are convincing reasons for adopting different tariffs. In this case, in the inspection, it has been found that theft of energy started from September, 2001. It is on that basis that the petitioner has been penalised. In view of the specific provision enabling the Board to adopt a longer period, provided there are justifiable reasons to do so, and in view of the positive finding in Ext.P1, I do not think that the penalty levied for ten months, calls for any interference.

9. The writ petition is, therefore, disposed of quashing Exts.P9 & P10, and leaving it open to the respondents to reassess the liability of the petitioner in the

 

light of what is stated above, and realise the amount actually due from the petitioner.

The writ petition is disposed of as above.

 