

**(1971) 08 KL CK 0047**  
**In the High Court Of Kerala**  
**Case No : W.A. No. 1011 of 1969**

State of Kerala

APPELLANT

Vs

Cochin State Power and light Corporation Ltd. and another

RESPONDENT

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**Date of Decision :** 17-08-1971

**Acts Referred:**

Constitution of India, 1950 — Article 286  
Electricity Act, 1910 — Section 28

**Citation :** (1971) KLJ 770

**Hon'ble Judges :** T.C. Raghavan, Acting C.J.; P. Narayana Pillai, J

**Bench :** Division Bench

**Advocate :** Government Pleader, for the Appellant; N.N. Venkitachalam and V.K.K. Menon, for the Respondent

**Final Decision :** Dismissed

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## Judgement

T.C. Raghavan, Ag. C.J.

1. The State of Kerala, who was the first respondent in the writ petition, is the appellant, the first respondent in the appeal, the Cochin State Power and Light Corporation, Ernakulam, being the petitioner in the writ petition; and the second respondent is the Cochin Electric Company, Mattancherry, a licensee for distributing electric energy in the Mattancherry area. The writ petition was for a writ in the nature of prohibition or of mandamus prohibiting the State from collecting tax from the first respondent and also for refund of the tax illegally collected. The writ petition was allowed by a learned Judge of this Court and hence the appeal. The first respondent was a licensee distributing electric energy within the Ernakulam municipal limits and in certain other areas (not in Palluruthy area); and the second respondent was a similar licensee distributing electric energy in the Mattancherry area (again, not in the Palluruthy area). The first respondent required energy for distribution in the Palluruthy area, but the Kerala State Electricity Board could not supply electricity to the first respondent since the Board had no distribution point in the area. Therefore, with the

concurrence of the State and the Electricity Board, the first respondent started purchasing electric energy from the second respondent for distribution in the Palluruthy area. The claim of the State was that the first respondent was a consumer u/s 2(a) of the Kerala Electricity Duty Act and was therefore liable to pay duty on the electric energy taken by it from the second respondent for distribution among the consumers in the Palluruthy area. It was this contention that was rejected by the Single Judge.

2. The term "consumer" is not defined in section 2(a), the definition therein being only an inclusive definition stating that "consumer" includes a local authority, company or other person to whom energy is supplied by a licensee on payment of charges or otherwise, and a licensee or other person who consumes energy generated by himself, but does not include a licensee to whom energy is supplied by the State Electricity Board for supply to others." The term "licensee" is defined in clause (d) of section 2 to mean the Kerala State Electricity Board, any person licensed under Part II of the Indian Electricity Act, 1910 to supply energy and includes any person who is deemed to have been so licensed and any other person who has obtained sanction of the Government u/s 28 of the said Act and the Government when it is engaged in the business of supplying energy. Section 3 of the Act levies duty on certain sales of energy by licensees and section 4 levies duty on consumers. Section 5 provides for the mode of collection by licensees of duty levied on consumers. The first respondent, as a licensee, is bound to pay duty u/s 3 on the sales of energy by it to consumers, and it pays it too. The claim now is that the first respondent should, in addition, pay another duty u/s 4 on the electric energy purchased by it from the second respondent and distributed to the consumers in the Palluruthy area on the ground that the first respondent is a consumer of such electric energy purchased and distributed by it. It is the correctness or otherwise of this contention that has to be considered.

3. The argument of the Government Pleader is that there are two parts or limbs in section 2(a) in the inclusive definition of the term "consumer"; that the first part includes a local authority, company or other person to whom energy is supplied by a licensee on payment of charges or otherwise; that the second part includes a licensee or other person who consumes energy generated by himself; and that the first limb will take the first respondent within its ambit. Of course, the last part of the definition appears to apply to both these cases: and that part reads.

but does not include a licensee to whom energy is supplied by the State Electricity Board for supply to others

4. The learned Single Judge has considered this question fairly elaborately in his judgment and has also considered a few decisions on the question. Since the term "consumer" is not defined by section 2(a) (the definition being only an inclusive one), the said term must have the meaning it has in common parlance. The Supreme Court had occasion to consider the meaning of the expression "for

the purpose of consumption" in Article 286 of the Constitution (as it then stood) in *Anwarkhan Mahboob Co. Vs. The State of Bombay (Now Maharashtra) and Others*, . It may also be noted in this connection that the power of the State to tax electric energy is contained in Entry 53 of List II of the Seventh Schedule: and the said Entry reads:

Taxes on the consumption or sale of electricity.

5. The Supreme Court extracted a passage from the aforesaid decision in its later decision in *Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality*, and followed it. In the passage quoted appear

Consumption consists in the act of taking such advantage of the commodities and services produced as constitutes the "utilization" thereof. For each commodity, there is ordinarily what is generally considered to be the final act of consumption.

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In the absence of any words to limit the connotation of the word "consumption" to the final act of consumption, it will be proper to think that the Constitution-makers used the word to connote any kind of user which is ordinarily spoken of as consumption of the particular commodity.

6. The word "consume" means, in the *Shorter Oxford English Dictionary*, "to use up, esp. to eat up, drink up; to take up, spend, waste (time)"; and the word "consumer" means "he who or that which consumes". From all this it is clear that, since the term "consumer" is not defined in section 2(a) of the *Kerala Electricity Duty Act*, the term must have the same meaning it has in common parlance, in ordinary usage--the dictionary meaning. That is, the term "consumption" can only mean "any kind of user which is ordinarily spoken of as consumption of the particular commodity". With this in view if we analyse the facts of the case, it will emerge that there is no such user of the current taken by the first respondent from the second respondent, the former merely distributing the energy to the consumers in the Palluruthy area: the first respondent does not consume (use up) the electric energy it purchases from the second respondent in any manner "which is ordinarily spoken of as consumption of the particular commodity"; distribution of the electric energy by the first respondent among the consumers in the Palluruthy area cannot be "ordinarily spoken of as consumption" of the energy.

7. Yet another argument has been advanced by the Government Pleader that, when an inclusive definition of a term is given so as to include other things, the scope of the term is widened to include the other things as well; in other words, the inclusive definition widens the ambit of the term and does not restrict its scope. In support of this contention, the Government Pleader has cited the decision of the *Andhra Pradesh High Court* in *Taj Mahal Hotel, Secunderabad Vs. Commissioner of Income Tax, Hyderabad*, . Their Lordships of the *Andhra*

Pradesh High Court have considered in this case the term "plant" in section 10(5) of the Indian Income Tax Act of 1922. "Plant" therein included vehicles, books, scientific apparatus and surgical equipments purchased for the purpose of the business, profession or vocation. And in considering this and the inclusive definition in the section. Their Lordships have observed that the term "include" is very generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute and when it is so used, these words and phrases must be construed as comprehending, not only such things as they signify according to their nature and import, but also those things which the interpretation clause declares that they shall include. Their Lordships have observed that, when it is mentioned that a particular definition includes certain things, it should be taken that the legislature intended to settle a difference of opinion on the point or wanted to bring in other matters that would not properly come within the ordinary connotation of the word or expression or phrase in question. In this connection, it will be instructive to note a passage from Craies on Statute. Law, Fifth Edition, at page 198, where it is stated

An interpretation clause which extends the meaning of a word does not take away its ordinary meaning.

8. Then a passage from Robinson v. Barton Eccles Local Board (1883), 8 App. cas. 798) has also been extracted by the author: and the passage is

An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable, but to enable the word as used in the Act, when there is nothing in the context or the subject-matter to the contrary, to be applied to some things to which it would not ordinarily be applicable.

9. It is clear from these that, by the inclusive definition, the ordinary meaning of the term "consumer" is not changed. Therefore, the contention that the first respondent is not a consumer coming within section 2(a) has to be upheld.

10. Probably, the legislature, in enacting section 2(a), did not foresee such a situation, because the case of a licensee purchasing electric energy from another licensee for distribution could not have ordinarily been contemplated. The argument, that in the last part of section 2(a) a licensee to whom energy is supplied by the State Electricity Board for supply to others is excluded from the term "consumer" means that a case like this where electric energy is supplied by one licensee to another is included in the term, cannot also be accepted. The single Judge has made it clear in his judgment that the exclusion of one does not necessarily mean the inclusion of all others. As observed by the learned Judge, the section states something and the section has to mean only what it says; and if the contention of the Government Pleader is accepted, the result will be that the section is given a meaning which it does not express. The first respondent is itself a licensee; and if any indication is to be gathered from the abovesaid exclusion, it can only be that a licensee who takes electric energy from another

licensee for distribution should also be excluded from the term "consumer". The decision of the Single Judge is therefore confirmed and the appeal is dismissed with costs of the first respondent.