

(2014) 03 KL CK 0126

In the High Court Of Kerala

Case No : WA.No. 1368 of 2013 in WP(C). 102/2011

The Kerala State Electricity Board, Vydhyuthi Bhavan and The Assistant Engineer, Kerala State Electricity Board **APPELLANT**

Vs

Consumer Exports, Star Fish, The Consumer Grievance Redressal Forum (KSEB), Thaanath Electricity Ombudsman and M.V. Mohamood **RESPONDENT**

Date of Decision : 10-03-2014

Acts Referred:

Citation : (2014) 03 KL CK 0126

Hon'ble Judges : Antony Dominic, J;Anil K. Narendran, J

Bench : Division Bench

Advocate : T.R. Rajan, SC, K.S.E.B., Advocate 3rd to 5th Respondents, Advocate for the Appellant; Blaze K. Jose, R1 and Sri. Johnson Manayani, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Antony Dominic, J.—These appeals are filed by the Kerala State Electricity Board and its officers aggrieved by the common judgment rendered by the learned Single Judge in W.P.(C)Nos.102/2011, 38040/2010 and 79/2011.

2. We heard the learned counsel for the appellants and also the learned counsel appearing for the respondents/petitioners.

3. The respondents/petitioners, are owners of sea food processing plants which availed of supply of electrical energy from the appellants. The Tariff applicable was under LT-IV (Industrial). While so, by order dated 26/11/2007, a tariff order was issued whereunder freezing and cold storage were shifted from LT IV to LT VII-A (commercial). This was challenged before this Court. But the respondents/petitioners were relegated to pursue their remedies before the Kerala State Electricity Regulatory Commission. Accordingly, Regulatory Commission was moved which by its order dated 29/8/2008, ordered that sea food processing unit shall be billed under LT IV Industrial category and consumers engaged in the

freezing and cold storage activity shall be billed under LT VII-A commercial category. This was confirmed in Ext.P2 order passed by the Commission also.

4. The premises of the respondents were inspected when, insofar as the respondents in W.A.No.1368 of 2013 is concerned, it was found that the supply in Consumer No.11144 was used for freezing and cold storage activity in the premises to which supply was available at Consumer No.5386 and not for processing. Similarly on inspection of Consumer No.19425 concerning the respondents in W.A.No.1406 of 2013 it was found in the mahazar dated 29/10/2009 that at the time of inspection supply was used only for freezing and cold storage and not for processing. Similar finding has been entered in the mahazar dated 29/10/2009 concerning Consumer No.10622 of the respondent in W.A.No.1370 of 2013 also. Based on the above finding bills were issued to the respondents.

5. The levy under LT-IV to LT VII-A and demanding differential amounts for the period from 01/12/2007 was challenged before the Consumer Grievances Redressal Forum also and before the Electricity Ombudsman and these authorities have confirmed the demand. It is in this background the party respondents filed the Writ Petitions. In the common judgment under Appeal, the learned Single Judge confirmed the shifting of Tariff from LT-IV to LT-VII A. However, the learned Judge held that the Board could not have retrospectively levied the charge under LT VII-A, particularly when there is no material before it. On this basis the impugned demands were set aside and aggrieved by this judgment, these appeals are filed by the Board and its officers.

6. Insofar as these appeals are concerned the only issue that is raised before this Court is regarding the correctness of the finding of the learned Single Judge that the levying of Tariff under LT VII-A could not have been effected with effect from 01/12/2007, as done in these cases. If as stated by the Board, after availing of supply of energy under LT-IV, it was used for any purpose attracting LT VII-A, the Board is certainly entitled to recover the energy charges at the rate as applicable to LT VII-A itself. Therefore it was not correct for the learned Single Judge to have prevented the Board totally from recovering its dues for the past period. However such recovery could have been effected only for the period from which the energy was used for any purpose attracting the Tariff under LT VII-A and not from the date when shifting of Tariff has taken place.

7. Insofar as these cases are concerned the Board has not placed any material before us to show that the change of user of energy was effected by the respondents from 01/12/2007, instead the Board has demanded higher Tariff with effect from 01/12/2007 only because the change of Tariff was effected from that date. Such approach cannot be approved. At the same time the party respondents who claimed that theirs is a seasonal industry and that they were also carrying processing activity and that the freezing mentioned in the mahazars were the situation only on the date of inspection or the period immediately preceding thereto, are having materials substantiating these contentions and

could have produced those materials before a fact finding authority, so that such authority could have estimated point of time from which the Tariff under LT VII-A is liable to be recovered from the consumers. In these case records revealed that such an exercise was not undertaken. Therefore we feel fairness requires that the party respondents should be given an opportunity to produce materials available with them before a fact finding authority for the above purpose.

8. Accordingly, we direct that within four weeks from today the party respondents herein will produce the materials proving that they were carrying on the processing activity in the unit in question for the period subsequent to 01/12/2007 also and that the user of energy for storage/freezing purpose was a development which occurred only at a later point of time. Such materials shall be produced before the Consumer Grievance Redressal Forum of the KSEB, which is a party to these cases. On production of such materials and after hearing the appellants and the party respondents the Consumer Grievance Redressal Forum will assess the amount, if any, that is due from the party respondents and on that basis, it will be open to the appellants to raise fresh demands on the party respondents/consumers.

The judgment of the learned Single Judge will stand modified to the above effect.

Writ Appeals are disposed of accordingly.