(2014) 11 KL CK 0211

In the High Court Of Kerala

Case No : WP (C). No. 38211 of 2007 (Y)

V.P. Abdul Basheer APPELLANT

Vs

Vyduthi State Electricity Board RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

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

Citation : (2014) 11 KL CK 0211

Hon'ble Judges : Anil K. Narendran, J

Bench : Single Bench

Advocate : K.K.M. Sherif, Lal K. Joseph, A.A. Ziyad Rahman, Sheena Samuel and P.H. Savan Kumar, Advocate for the Appellant; P.P. Thajudeen, SC, Advocate for the Respondent

Judgement

Anil K. Narendran, J.—The petitioner is running an industrial unit named Fathima Sea Foods engaged in the business of processing marine products. He is a consumer coming under the 3rd respondent with Consumer No. 11242 under LT IV (industrial) tariff. On 07/04/2006, the Anti Power Theft Squad (APTS) inspected the petitioner''s premises and prepared Ext.P1 site mahazar alleging that the petitioner was indulging in misuse of electrical energy through a tampered meter. Based on Ext.P1 site mahazar the petitioner was issued with Ext.P2 demand notice and Ext.P2(a) invoice demanding a total amount of 5,21,626/-. The power supplied to the petitioner''s premises was also disconnected immediately after the inspection.

2. Aggrieved by the demand made in Exts.P2 and P2(a) the petitioner preferred Ext.P3 appeal before the 2nd respondent, the appellate authority under Section 127 of the Electricity Act.

3. The 2nd respondent ordered restoration of power supply to the petitioner''s premises on condition that the petitioner remits 1/3rd of the total demand. In compliance with the said order the petitioner remitted an amount of 1,73,875/-

on 28/4/2006, as evident from Ext.P4 and power supply to the premises was restored.

4. The 2nd respondent after conducting a personal hearing disposed of Ext.P3 appeal filed by the petitioner by Ext.P5 order. In Ext.P5 order the 2nd respondent confirmed the demand made in Exts.P2 and P2(a). Based on Ext.P5 order the petitioner was issued with Ext.P6 and P6(a). It is aggrieved by Exts.P1, P5, P6 and P6(a) the petitioner has approached this Court in this Writ Petition.

5. By order dated 24/12/2007 this Court granted interim stay of disconnection of power supply to the petitioner''s premises, on payment of 1,50,000/- within a period of one month.

6. Heard the arguments of the learned counsel for the petitioner.

7. As evident from Ext.P1 site mahazar prepared by the Anti Power Theft Squad, in the inspection conducted in the petitioner''s premises on 07/04/2006 it was found that the petitioner was indulging in misuse of energy through a tampered meter. The petitioner could not produce any reliable material before this Court in order to challenge the said finding in Ext.P1 site mahazar. In such circumstances, the finding to that effect in Ext.P1 site mahazar and confirmed in Ext.P5 order can only be accepted.

8. Regarding the quantification of the energy misused, as evident from grounds 2 and 3 of Ext.P3 appeal, the petitioner raised various contentions with reference to the working hours, number of working days, etc. The petitioner also disputed the method of quantification adopted by the officers of the respondent Board. A perusal of Ext.P5 order passed by the appellate authority would show that the arguments advanced by the petitioner against the method of assessment adopted by the assessing authority are dealt with in detail and valid reasons have been stated by the appellate authority to confirm the assessment so made.

9. A perusal of Ext.P5 order would further show that, this is the 2nd time misuse of electrical energy is detected in the petitioner''s premises. The finding in Ext.P1 site mahazar is that, the plastic cover of the counter was loose and the plastic stud of the PCB was broken. The materials detected at the time of the inspection conducted by the APTS clearly established that the petitioner was indulging in misuse of electrical energy.

10. Ext.P7 statement produced along with the Writ Petition shows the average consumption of energy in the petitioner''s premises from 15/4/2002 till 15/4/2006. As can be seen from Ext.P5 order passed by the appellate authority the consumption details for the corresponding months of the subsequent year have also been produced before that authority. As rightly noticed by the appellate authority, the quantum of work in the petitioner''s industrial unit depends on the catch available and indicated by the sales volume and in such circumstances, a calculation based on connected load and working hours alone possible. Appellate Authority noticed further that, in the details of consumption

furnished the consumption have been ranging on an average of around 81 units per month to 27450 units/month. So this cannot be considered as a general average, since it is proved that the consumption can as well go upto 27450 units. Similarly, the working hours go upto 24 hours with 38 KW in September. Since, the readings were taken on 15/9/07 and 16/10/07 - 31 days is considered and the actual time with 38 KW comes to 23.3 hours. It was in such circumstances, the appellate authority concluded that, if material is available, the unit will be working for 100% load factor for 24 hours and an average assessment for 0.9 load factor for 22 hours as what is done need not require any revision and hence the appellate authority in Ext.P5 order confirmed the assessment made by the assessing authority.

11. There is absolutely no materials on record to indicate that such assessment made by the assessing authority and confirmed by the appellate authority is either irregular or arbitrary warranting an interference of this Court in exercising the discretionary jurisdiction under Article 226 of the Constitution of India. Therefore, I find absolutely no ground to interfere with Ext.P5 order or the consequential demand made in Exts.P6 & P6(a) and the Writ Petition is only to be dismissed.

12. When the matter was pending before the appellate authority, out of the total demand of 5,21,626/-, the petitioner remitted a sum of 1,73,875/-. Therefore the balance amount due is shown as 3,47,751/- in Ext.P6. In order to comply with the condition stipulated in order dated 24/12/2007 of this Court in this Writ Petition the petitioner remitted a further sum of 1,50,000/-. Therefore, the balance amount due is 1,97,751/-. Though this Writ Petition was pending consideration before this Court from December, 2007, the respondent Board neither filed any counter affidavit nor brought up the Writ Petition to vacate the interim order of stay granted on 24/12/2007.

13. The learned counsel for the petitioner submitted that the petitioner may be permitted to remit the balance amount of 1,97,751/- in 6 equal monthly instalments. Considering the facts and circumstances of the case, the petitioner is permitted to remit the said balance amount in three equal monthly instalments. The 1st instalment shall be payable on or before 10th December, 2014 and the 2nd and 3rd instalments shall be payable on 9th January, 2015 and 10th February, 2015 respectively. If the petitioner is remitting the said balance amount in three equal monthly instalments without default, the respondents shall not take any coercive steps against the petitioner pursuant to the demand made in Exts.P6 and P6(a). On the other hand, if the petitioner commits default in payment of any one of the instalments then it would be open to the respondent Board to initiate coercive steps to recover the entire balance amount in Exts.P6 and P6(a).

The Writ Petition is dismissed, subject to the above direction. No order as to costs.