

W.P.(C) No. 20553/2014 : 1 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 11<sup>TH</sup> DAY OF JANUARY 2023 / 21ST POUSHA, 1944

WP(C) NO. 20553 OF 2014

PETITIONER/S:

UNION BANK OF INDIA  
VADANAPALLY BRANCH, MIKAS BUILDING, VADANAPALLY  
THRISSUR, 680 614 REPRESENTED BY ITS BRANCH MANAGER  
SRI.DICKSON JOSEPH  
BY ADVS.  
SRI.A.S.P.KURUP, SC, UBI  
SRI.SADCHITH.P.KURUP

RESPONDENT/S:

- 1 THE DEPUTY CHIEF ENGINEER,  
KERALA STATE ELECTRICITY BOARD, ELECTRICAL CIRCLE  
IRINJALAKKUDA, THRISSUR-680 121.
- 2 THE ASSISTANT ENGINEER  
KERALA STATE ELECTRICITY BOARD, ELECTRICAL SECTION  
VADANAPPALLY, PIN. 680 614.
- 3 THE SUB ENGINEER  
KERALA STATE ELECTRICITY BOARD, ELECTRICAL SECTION  
VADANAPPALLY, PIN. 680 614.
- 4 THE SENIOR SUPERINTENDENT  
KERALA STATE ELECTRICITY BOARD, ELECTRICAL SECTION  
VADANAPPALLY, PIN. 680 614.
- 5 ADDL. R5 IMPLEADED:

THAHIRA KUNHIMOHAMED  
AGED 46, W/O.KUNHIMOHAMED, MATHILAKATH, CHIRAKKUZHI  
HOUSE, TRITHALUR WEST.P.O., THRISSUR -680 619.  
(ADDL. R5 IMPLEADED AS PER ORDER DATED 25.09.2014 IN I.A.  
NO. 12845/2014]

BY ADVS.  
SRI.JAICE JACOB,SC,KERALA STATE ELECTRICITY BOARD  
SRI.LIJU. M.P

R1 TO 4 - SRI.B.PREMOD,SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
11.01.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**'C.R'**

**SHAJI P. CHALY, J.**

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W.P.(C). No. 20553 of 2014  
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Dated this the 9<sup>th</sup> day of January, 2023.

**JUDGMENT**

This writ petition is filed by the Union Bank of India challenging Exhibit P3 bill dated 02.12.2013 issued by the Anti Power Theft Squad (APTS) and Exhibit P7 order dated 27.05.2014 passed by the appellate authority under Section 127 of the Electricity Act, 2003 ('Act, 2003' for short) r/w the Kerala State Electricity Board (Terms and Conditions of Supply), 2005 ('Supply Code, 2005' for short) as amended from time to time, whereby the appellate authority affirmed the bill issued by the Anti Power Theft Squad.

2. Brief material facts for the disposal of the writ petition are as follows:

The petitioner is a banking company constituted under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970. The petitioner Bank, for the purpose of providing ATM facility for its customers, took on rent a building bearing No.VII/491F of Vadanappally Grama Panchayat having an area of 688 sq. meters by executing a lease agreement on 01.01.2007, as is evident from

Exhibit P1. According to the petitioner, after taking the building on rent, the machinery was installed and the premises became functional from 2007 onwards. The electricity connection to the premises was a single phase connection under the tariff LT VI C. It is further pointed out that the Bank was being provided with a monthly bill in respect of electricity connection and the same was promptly being paid by the petitioner Bank. According to the petitioner, in respect of additional consumption, on account of the energy charges, the Bank was directed to pay the increased amount of caution deposit.

3. While so, on 29.11.2013, inspection was conducted by the Anti Power Theft Squad under the leadership of the Senior Superintendent, Kerala State Electricity Board, respondent No. 4, as is evident from Exhibit P2 site mahasar dated 29.11.2013. Thereafter, Exhibit P3 bill was issued for an amount of Rs.2,25,334/- for the unauthorised use of electricity from the month of November, 2007 till November, 2013. The petitioner filed Exhibit P4 objection dated 23.12.2013 and has deposited 50% of the amount assessed, it is submitted.

4. The case projected by the petitioner is that even though an objection was raised, the bill was confirmed. Being aggrieved, Exhibit P6 appeal was preferred. However, the appellate authority

also rejected the contentions and affirmed the bill issued by the Anti Power Theft Squad. It is also submitted that the petitioner later filed Exhibit P8 application dated 04.12.2013 for the regularization of the additional load used for the premises taken on lease. Now, the case projected by the petitioner is that the appellate authority did not consider the contentions raised by the writ petitioner in its proper perspective and therefore, the bill as well as the appellate order is illegal and arbitrary.

5. It is further submitted that the usage of electrical energy was correctly metered and the petitioner had been promptly paying the bill for the same and therefore, there is no unauthorised usage of electricity so as to issue a huge demand as is seen from Exhibit P3. Further, the 4<sup>th</sup> respondent is not a person competent enough to conduct inspection and take action against the unauthorised use of electricity.

6. The petitioner has also raised a contention that the claim for the additional amount on the basis of the alleged unauthorised load is barred by law of limitation. Other contentions are also raised by the petitioner relying upon Section 126 of the Act, 2003.

7. I have heard the learned counsel for the petitioner Si. Sadchith P. Kurup and the learned Standing Counsel for the Kerala State Electricity Board Sri. B. Pramod, and perused the pleadings

and material on record.

8. The learned counsel for the petitioner has advanced arguments on the basis of the pleadings deliberated above.

9. The learned Standing Counsel, on the basis of the counter affidavit filed, has fully supported the bill issued by the Anti Power Theft Squad and the order passed by the appellate authority.

10. The sole question to be considered is whether any manner of interference is required to the Exhibit P3 bill and Exhibit P7 order passed by the appellate authority in a proceeding under Article 226 of the Constitution of India.

11. On a reading of the order passed by the appellate authority, it is quite clear and evident that the appellate authority has taken into account the entire contentions advanced by the writ petitioner bank and has arrived at the conclusion that the petitioner has made unauthorized use of electricity in terms of the provisions of Section 126 of the Act, 2003 r/w regulation 50 of the supply code, 2005. In order to have a clarity for the issue, the order passed by the appellate authority is extracted hereunder:

**“Observations and Findings**

After considering the factual matrix of the issue along with the statements of appellant the following points should be considered.

1. whether the method of calculating the penal bill is correct.
2. Period of calculation is as per order.

Point-1:- According to clause 26 of KSE Board Terms and Conditions of Supply, 2005, "Should the consumer, at any time, after the supply of energy has been commenced, desire to increase the number or wattage or capacity of lights, fans or motors etc. on his premises on a temporary or permanent basis or in any way alter the position of his wiring therein, request thereof must be made by the consumer in writing to the Board." In this case, it is revealed that the consumer had neither made such request nor produced connected papers for regularizing his additional loads before the respondent. He has no explanation as to why without obtaining such sanction be resorted to use additional load in the premises. The appellant has breached the agreement, rules, and regulations etc. Here, the Asst. Manager who appeared for hearing on behalf of the appellant has already that they have connected AC, one year before the inspection date. So method of calculation is correct.

Point-2: As per Section 26(5) of the Electricity Act, 2003 if the period during which unauthorised use of Electricity has taken place, cannot be ascertained such period shall be limited to a period of 12 months immediately preceding date of inspection. Here, the appellant has agreed that the connection was effected in the Bank along with ATM on 2007. It is also clear as per service connection agreement that the connection was effected on 2007 with connected load of 780 watts under LT VI C tariff. The load used other than 780 watts is unauthorised additional load. So period of billing is as per order.

In this circumstance, I do not find any merit to review on the Penal assessment made by the assessing officer and so cannot be admitted.

**Decision**

In the backdrop of the above, I am of the considered view that there is no necessity which warrants modifying or revision of the final bill issued by the assessing officer and hence the appeal petition is dismissed herewith. As per the provisions 51(2) of Terms and Conditions of Supply, 2005, Penalty for unauthorised additional load shall be levied till they said load is removed or regularised as per rules till 31.03.2014 and action shall be initiated by the respondent vide Regulation 153 of the Supply Code, 2014 from 01.04.2014. Interest for belated payment need not be levied for the appeal pending period.”

12. It can be seen that the entire aspects dealt with by the appellate authority is based on facts. The order was passed by the appellate authority after providing an opportunity of hearing and participation to the petitioner.

13. The paramount contention advanced by the petitioner is that the issue raised as per Exhibit P3 is barred by limitation. It is also pointed out that additional charges that can be levied at the most is only for a period of 12 months in contemplation of Section 126(5) of the Act, 2003. To have a clear picture of the said contention raised by the petitioner, I think, it is only appropriate that Section 126 of the Act, 2003 is extracted, and it reads thus:

“126. **Assessment.**—(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer

comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

1[(3) The person, on whom an order has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.]

4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

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3[(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.]

(6) The assessment under this section shall be made at a rate equal to [twice] the tariff applicable for the relevant category of services specified in sub-section (5).



Explanation.—For the purposes of this section,—

(a) “assessing officer” means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) “unauthorised use of electricity” means the usage of electricity—

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee; or

(iii) through a tampered meter; or

2[(iv) for the purpose other than for which the usage of electricity was authorised; or

(v) for the premises or areas other than those for which the supply of electricity was authorised.]”

14. Therefore, it can be seen that if the unauthorized use of electricity cannot be ascertained alone, such period shall be limited to a period of 12 months immediately preceding the date of inspection. It is also clear from Section 126(6)(b)(v) of the Act, 2003 that if electricity is used exceeding the authorized supply, it is an unauthorized use. Moreover, regulation 26 of the Supply Code, 2005 makes it clear if power exceeding the permissible connected load is required, it shall be requested and granted by the board.

15. This is a case where the Board has clearly found that after securing electricity connection, additional load was being used and monthly bills for the additional burden were being paid without

any protest from the year 2007 itself for the usage of electricity over and above the connected load. This is clear evidence to show that there is a definite period ascertainable for the unauthorized use. It was taking into account the said material piece of evidence that the appellate authority had arrived at the conclusions. It was in addition that the appellate authority found that air conditioners were fitted later, still exceeding the connected load.

16. In fact, the connected load that was provided to the petitioner was 780 watts. However, the same has exceeded from the year 2007 itself, and consequent to the air conditioners fitted in the premises, the connected load again varied, thus making the situation worse. I am also of the view that, the limitation under the Limitation Act does not hit the claim of the Board as contented by the petitioner, because the instant violation is a continuous and recurring one, renewing the dues every day, till the unauthorized load is dismantled. This position would be explicit and clear from Section 56 of the Act, 2003, which reads thus:

**"56. (Disconnection of supply in default of payment): -- (1)**

Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less

than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

(a) an amount equal to the sum claimed from him, or  
b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

17. Therefore the limitation of two years prescribed under the said provision will not apply to the case on hand, being a continuous one. Typical is the provision contained under Regulation 136 of the Kerala Electricity Supply Code, 2014. This is in addition to the factors provided under Section 126 (5) of the Act 2003.

18. Considering the facts, law, and circumstances above, it can be seen that the petitioner has not made out any case of arbitrariness, illegality, or other legal infirmities in the order passed by the appellate authority justifiable to be interfered with in a proceeding under Article 226 of the Constitution of India.

Needless to say, writ petition fails and accordingly, it is dismissed.

sd/- **SHAJI P. CHALY, JUDGE.**

*Rv*

APPENDIX OF WP(C) 20553/2014

PETITIONER'S EXHIBITS:

- P1 EXT.P1 - COPY OF LEASE DEED DATED 1-1-2007  
BETWEEN PETITIONER BANK AND THE LESSOR
- P2 EXT.P2 - COPY OF SITE MAHAZAR DATED 29-11-2013  
PREPARED BY 3RD RESPONDENT
- P3 EXT.P3 - COPY OF ELECTRICITY BILL DATED 2-12-  
2013 ISSUED BY 4TH RESPONDENT
- P4 EXT.P4 - COPY OF OBJECTION DATED 23-12-2013  
FILED BY PETITIONER BEFORE THE 1ST RESPONDENT.
- P5 EXT.P5 - COPY OF BILL DATED 23-12-2013 ISSUED BY  
RESPONDENTS
- P6 EXT.P6 - COPY OF APPEAL DATED 25-2-2014 FILED BY  
PETITIONER BEFORE HE APPELLATE AUTHORITY.
- P7 EXT.P7 - COPY OF ORDER DATED 27-5-2014 ISSUED  
BY 1ST RESPONDENT
- P8 EXT.P8 - COPY OF APPLICATION DATED 4-12-2013  
FILED BY PETITIONER FOR REGULARISATION.

RESPONDENT'S EXHIBITS: NIL

*True Copy*

/P S To Judge/