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W.A.No.1588 of 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE S.MANU

WEDNESDAY, THE 16<sup>TH</sup> DAY OF OCTOBER 2024 / 24<sup>TH</sup> ASWINA, 1946

WA NO. 1588 OF 2024

AGAINST THE JUDGMENT DATED 15.07.2024 IN

WP(C) NO.34059 OF 2015 OF HIGH COURT OF KERALA

APPELLANT/2<sup>nd</sup> RESPONDENT :

SECRETARY,  
TRICHUR TENNIS TRUST, KINATTINGAL TENNIS & SPORTS  
ACADEMY, PUNKUNNAM P.O, PUZHAKKAL, THRISSUR,  
KERALA - 680002, DR.ANTO T.JOSEPH,  
AGED 73 YEARS, S/O T. JOSEPH GEORGE, THEKKEKARA  
HOUSE, OLLUR VILLAGE, THRISSUR TALUK, THRISSUR  
DISTRICT, PIN - 680306

BY ADVS.  
ALBIN T.O.  
UMAMAHESWARY P.M. (K/002939/2024)

RESPONDENTS/PETITIONER & RESPONDENT No.1:

1 THE ASSISTANT ENGINEER  
ELECTRICAL SECTION, KERALA STATE ELECTRICITY  
BOARD LIMITED, AYYANTHOLE, THRISSUR DISTRICT,  
PIN - 680002



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2 THE KERALA STATE ELECTRICITY APPELLATE AUTHORITY  
BUILDING NO.CC 51/52, NEAR 110 KV SUB STATION,  
VYTILO, COCHIN, PIN - 682019

BY ADVS.  
SRI.B.PREMOD  
SRI.RAJU JOSEPH (SR.)

OTHER PRESENT:

SR P B KRISHNAN (SR)  
SRI JOSEPH ANTONY - SC

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
16.10.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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[CR]

NITIN JAMDAR, C.J.  
&  
S.MANU, J.

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Dated this the 16<sup>th</sup> day of October, 2024

**JUDGMENT**

**S.MANU, J.**

Appellant is a Society registered under the provisions of the Travancore-Cochin Literary Scientific and Charitable Societies Registration Act, 1955. Appellant has an electric connection with consumer No.14438 under LT-VII C commercial tariff. A surprise inspection was conducted on 9 October 2014 by Anti Power Theft Squad (APTS), Thrissur unit of the Kerala State Electricity Board in the premises of the Appellant. APTS found that the Appellant had added additional load to the tune of 50 KW without obtaining sanction from the Electricity Board. A provisional bill under Section 126 of the Electricity Act, 2003 for ₹13,49,366/- was issued to the Appellant on 15 October 2014. A separate notice directing the Appellant to disconnect the additional load was also issued. After considering the objection



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submitted by the Appellant and hearing the appellant, Ext.P2 final bill was issued. The amount demanded in Ext.P2 dated 14 November 2014 is ₹13,49,366/-.

2. Appellant challenged the final bill by approaching the Kerala State Electricity Appellate Authority. The said authority disposed the appeal by order dated 30 June 2015. Final assessment order was set aside. The Board was directed to issue revised assessment within 15 days under LT-VIIA tariff for entire usage of electricity, limiting the period of assessment from 16 June 2014 to 9 October 2014. Further, the Board was directed that no surcharge need be levied for the period of pendency of the appeal and excess amount remitted if any shall be refunded with interest as per Regulation 158 (18) of Kerala Electricity Supply Code, 2014.

3. The Board approached this Court in W.P.(C)No.34059 of 2015 aggrieved by the order passed by the appellate authority. The Board contended that in view of Section 126(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



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months immediately preceding the date of inspection. In the present case, there was no evidence as to when the unauthorised load was connected. Therefore, the assessment was made for a period of 12 months in accordance with Section 126(5). The Board submitted that the appellate authority went wrong in limiting the period from 16 June 2014 on the ground that an application for additional power requirement was submitted by the Appellant on 16 June 2014. The Board further submitted that the reasoning of the appellate authority that the Assistant Engineer was bound to check whether usage of additional load was intended for authorised purpose was incorrect. The officer had not committed any omission as there was no occasion to see the connected load inside the building. The Board also submitted that there was no reason to assume that additional load was not connected prior to 16 June 2014.

4. The learned Single Judge accepted the contentions of the Board and allowed the writ petition. Appellate order was set aside and the final assessment was restored. Aggrieved by the judgment of the learned Single Judge this writ appeal is filed. Learned Senior Counsel Sri.P.B.Krishnan appearing for the Appellant submitted that the



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intervention by the learned Single Judge was incorrect. He argued that the Appellate Authority had set aside the assessment after proper consideration of all relevant aspects. He pointed out that the Appellate Authority had rejected many of the contentions of the Appellant and found only the contention regarding period of assessment in favour of the Appellant. He asserted that the Appellant came forward with an application for additional power requirement on 16 June 2014 and therefore the APTS was not justified in assuming that the load connected as on the date of inspection was unauthorised. So also, he argued that assessing unauthorised use for a period of 12 months is unjust and illegal in the case on hand. The learned Standing Counsel for KSEB, Sri.B.Premod however submitted that the assessment was strictly in accordance with the provisions of Section 126 of the Electricity Act, 2003. He submitted that the conclusions arrived at by the Electricity Appellate Authority were perverse as the said authority has virtually ignored the provisions of Section 126(5) of the Act. Assumptions of the appellate authority reflected in the appellate order were unsustainable. He therefore submitted that the judgment passed by the learned Single Judge is only to be upheld.



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5. Section 126 (5) of the Electricity Act, 2003 is extracted hereunder for ready reference;

*“126. Assessment. - xxx xxx xxx*

*(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.”*

The above provision contemplates two situations that may arise, when the assessing officer reaches the conclusion that unauthorised use of electricity has taken place-

- i. Period during which unauthorized use of electricity is ascertainable
- ii. Such period cannot be ascertained

Assessment, as per the provision shall be made for the actual period in cases of situations falling under situation (i) as above; and in cases under



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situation (ii), the assessment shall be limited for a period of twelve months immediately preceding the date of inspection. Therefore, the crucial factual aspect to be ascertained for the purpose of assessment is the point of time from which unauthorised use of electricity has taken place. If the said point of time is indistinct or unascertainable, only option under law is to make assessment for a period of twelve months preceding the date of inspection. Hence, if a consumer has disagreement with assessment made for a period of twelve months prior to the date of inspection, it is incumbent on the consumer to prove the point of time of actual commencement of unauthorised consumption.

6. Apart from hearing the respective Counsel, we have examined the order of the Appellate Authority as well as the impugned judgment, keeping in mind the provisions of Section 126 (5) of the Act and its implication as discussed above. We do not find any firm factual finding in the order of the Appellate Authority regarding the point of time of commencement of unauthorized use of electricity by the appellant. Unless the said jurisdictional fact was ascertained and a finding regarding the same was entered into, the Appellate Authority could not have exercised its appellate powers to interfere with the period of assessment





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as per the final assessment order. Interference, without a finding on the jurisdictional fact, can be considered only as erroneous exercise of jurisdiction. We find that the appellant has not made any efforts, apart from asserting so, to establish that the actual utilization of unauthorized load was for a period less than twelve months. Merely for the reason that the Appellant submitted an application for additional load on a particular date, it cannot be presumed that the unauthorised consumption commenced only from that date. The Authority has strained to find fault with the Board and failed to take note of the most relevant aspect in the matter of assessment, the uncertainty about the point of time of actual connection of additional load. We are therefore of the view that the order passed by the Appellate Authority is the result of erroneous exercise of jurisdiction and hence unsustainable in the eye of law. The learned Single Judge was right in setting aside the order of the Appellate Authority and restoring the final assessment. We therefore find no merit in this appeal. Appeal is accordingly dismissed.

Sd/-  
NITIN JAMDAR  
CHIEF JUSTICE

Sd/-  
S.MANU  
JUDGE

skj