

JUDGMENT

Dated this the 2nd day of July 2020

S.Mani Kumar,C J.

This is a public interest litigation filed by a person claiming to be a social worker challenging the unauthorized bimonthly billing system adopted by the Kerala State Electricity Board Limited (KSEB Limited) with regard to the bills issued to the domestic consumers. Various facts and figures are pointed out in respect of the methodology adopted by the meter readers while taking the consumption of electricity bimonthly bills of the domestic consumers. It is pointed out that while issuing bills to the consumers bimonthly, KSEB used to take average of total consumption upto the reading date in order to fix the consumption of electricity for a month. Thus according to the petitioner, due to that formula adopted by the KSEB the consumers are forced to pay more amounts when compared to the monthly billing system. It is also the case of the petitioner that though the said system is beneficial to consumers who consumed electricity at a lower level, a large number of domestic consumers are forced to pay charges of a higher slab rate. That apart, it is submitted that the bimonthly billing system and the formula adopted by the second respondent for determination of bills to its domestic consumers is not approved or recognized by the Kerala State Electricity Regulatory Commission, the third respondent herein. Petitioner has also pointed out certain unprecedented situations of issuing bills taking into account a period of

76 days overlooking even the bimonthly formula employed by the KSEB in the wake of the situations pertaining to the pandemic COVID 19. The sum and substance of the contention is that the bills issued to the domestic consumers are excessive and therefore, it requires correction and the monthly billing system shall be adopted by the KSEB after securing approval from the third respondent Regulatory Commission. With the above backdrop, the following reliefs are sought for:

“(i) issue a writ of mandamus or any other appropriate writ, order or direction commanding the 2nd respondent to take steps for introducing a monthly billing system for all its consumers and submit the same for approval of the 3rd respondent as contemplated under the Kerala State Electricity Supply Code, 2014 in the interests of justice.

(ii) issue a writ of mandamus or any other appropriate writ, order or direction commanding the 2nd respondent to take the usage during the month of March, April and May to be based on the average consumption and the rest may be spread over in the following months, in the interest of justice.”

2. The KSEB has filed a statement through its counsel disputing the allegations and the claims and demands raised by the petitioner. The locus standi of the petitioner to file the public interest litigation is also under challenge. That apart, it is stated that the KSEB is issuing bills to its consumers in accordance with the procedure followed as per the Electricity (Supply) Act, 1948 and the

Regulations issued thereunder. According to the Board, the Board caters to the need of over one crore consumers spread over the urban and rural areas of the State. It is submitted that the bills are issued to the consumers after taking the actual meter reading at the end of the lockdown period taking into account the actual energy consumption of each and every consumer. It is also stated that petitioner is not a registered consumer of the Kerala State Electricity Board and the writ petition is filed for extraneous reasons without any bonafides and claiming to uphold public interest. Since the bills are issued to the consumers individually , if they are aggrieved by such bills there are remedies available to dispute the bills as per Regulation 130 of the Kerala Electricity Supply Code, 2014. If and when any such complaints are received, the designated officer of the licensee would immediately carry out a review and in appropriate cases would revise the bill. Even in spite of the same if the grievance of the consumer persists, the consumer is at liberty to approach the Consumer Grievance Redressal Forum of the KSEB for settling the dispute, and still aggrieved, a further appeal can be preferred there from, to the Ombudsman constituted under the statute. It is a fact that the bills produced by the petitioner would not show that he is a registered consumer. However, it is submitted that he is a tenant under one Kuruvila.A.V. and the bill issued to Mr.Kuruvila is produced along with the writ petition. It is

relevant to note that the petitioner has not produced any document to show that the petitioner is a tenant under Mr.Kuruvila. Anyhow, it is submitted that due to the lockdown with effect from 24.3.2020 declared by the Government of India and due to the consequent restrictions, the Board could not employ its officers to take the meter reading for the month of March and April and only on relaxing the lockdown restrictions the Board was able to take steps for meter reading and issue the bi- monthly bills. It is also submitted that none of the registered consumers have raised any complaints with respect to the bills issued by the Board. It is also submitted that a consumer is billed under non-telescopic rates, and taking into account the actual facts and figures with respect to the bills produced by the petitioner, the manner under which the calculations are arrived at are also narrated in the statement. Anyhow, it is submitted that the KSEB Limited on realizing that all classes of consumers are experiencing difficulties in paying electricity bills due to the cash crunch brought about by the lock down, has allowed several reliefs to the consumers, which are enlisted as follows:

- “1. Decision was taken not to disconnect consumers on grounds of non-remittance of electricity charges during the lockdown period.
2. Surcharge was not made applicable for belated payment to electricity bills issued/ which became due from the time of commencement of the period of lockdown, till 16.05.2020.
3. Allowed a rebate of 25% on fixed charges applicable to all industrial,

commercial and private hospitals for the months of March, April & May 2020 and to defer the payment of balance fixed charge up to 15.12.2020, without levying interest.

4. Online transaction charges, in applicable cases, to be borne by KSEB for a period of 3 months up to 19.07.2020.

5. Non-Domestic consumers who were billed on previous average consumption, were permitted to remit 70% of the demand as their bill amount, if they so desire.

6. Further 5% cash-back was allowed (subject to a maximum of 100) between 04.05.2020 and 16.05.2020 to consumers availing online payment option for the first time.

7. Decided to allow domestic consumers to remit at least half the bill amount for the bills issued in the months of April, May and June 2020, before 15.06.2020 or the due date of the bill whichever is later and to allow two equal installments for balance amount in the subsequent monthly/bimonthly bills, based on their request.”

3. That apart, it is pointed out that the bimonthly system is only the feasible method to read the electric meters installed in the premises of the consumers and the monthly reading of the bill is not feasible. The third respondent has also filed a statement explaining the bimonthly billing system, its consequences and also the monthly billing system and its consequences. Other aspects are also dealt with in the statement including in the manner in which the average monthly consumption is arrived at and the charges imposed on the consumers. That apart, it is stated that the monthly billing system was introduced by the KSEB Limited in the State as

per its order dated 20.3.1990 and at present all low tension consumers with connected load less than 20 KW (except industrial consumers) are billed under bimonthly spot billing system. The third respondent was constituted by the State Government during November, 2002 and the Electricity Act, 2003 came into existence from June 2003. As per Section 185 (2)(a) of the Electricity Act 2003, anything done or any action taken or purported to have been done under the repealed laws shall, insofar as it is not inconsistent with the provisions of the Act, be deemed to have been done or taken under the corresponding provisions of the Electricity Act 2003. Therefore, by virtue of the saving provisions contained under the aforesaid provision of the Electricity Act 2003, the KSEB has been continuing with the bimonthly billing system till date. As per Section 50 of the Electricity Act, 2003 read along with Section 181(2)(x) of the Act 2003, Commission vide the notification dated 2.3.2005 notified the Kerala Electricity Supply Code, 2005. The Regulation 13 of the Supply Code, 2005, recognizes the monthly billing and the bimonthly billing. As per Regulation 2(1)(h) of the Supply Code, 2005, the billing period is defined to mean “the period between two consecutive meter reading dates”. Subsequently, the Commission as per notification dated 31.1.2014 notified the Supply Code, 2014 by updating the advancement in the electricity sector till then. The Regulation 2(18) of the Code

defines the 'billing cycle or billing period' to mean "the period as approved by the Commission for which regular electricity bills are prepared by the licensee for different categories of consumers. Further, Regulation 67 of the Supply Code, 2014 recognizes the monthly billing system and bimonthly billing system. The KSEB has been continuing with the bimonthly billing after the introduction of the Supply Code, 2014. However, not sought separate approval for the monthly/bimonthly billing system followed by the licensee. It is also stated that the bimonthly billing system is one of the prudent billing method followed by most of the States in the country and the Commission is unable to find any fault with the method adopted by the KSEB Limited for raising electricity bills for 120 lakh + Low Tension consumers in the State of Kerala. The Commission has also recognized the monthly billing method and bimonthly billing method contained under the Supply Code, 2005 and the Supply Code, 2014 so also the tariff orders issued by it. Regulation 124 of the Supply Code, 2014 specified the 'procedure for billing when the meter is not accessible', which reads thus:

"124. Procedure for billing when meter not accessible.- (1) If the licensee is not able to access the meter for reading, a provisional bill may be issued on the basis of the average consumption of the previous three billing cycles.

(2) The licensee shall ensure that such provisional billing does not extend to more than two billing cycles at a stretch, and there are not more than two provisional bills generated for a consumer during one financial year.

(3) The provisional bills shall be adjusted on the basis of the subsequent actual meter reading.”

4. Therefore, the sum and substance of the contention advanced by the third respondent is that the procedure adopted by the KSEB in respect of the domestic consumers by giving bimonthly bills is in accordance with law and the contentions put forth by the petitioner has no legal or factual basis enabling the petitioner to secure the reliefs as is sought for.

5. We have heard Dr. Mathew A Kuzhalsadan appearing for the writ petitioner, Adv.Pramod representing the Standing Counsel for the KSEB and Sri.Vipin P.Varghese appearing for the third respondent/Kerala State Electricity Regulatory Commission and perused the pleadings and documents on record.

6. Respective counsel have addressed their arguments in accordance with the pleadings discussed above. The primary question that arises for consideration is whether the public interest litigation filed by the petitioner is maintainable in law. The narration of facts made above would make it clear that the issue relates to the alleged irregular bills issued to the domestic consumers by the KSEB Limited. The facts and figures put forth by the KSEB as well as the Regulatory Commission make it clear that there are about 1.20 crores low tension consumers under the KSEB Limited. Bills are issued to the consumers bimonthly and

therefore, if any consumer is having any dispute with respect to the bimonthly bill issued, such irregularity could be identified by the consumer alone, and as per the provisions of the Electricity Supply code 2014 there are ample provisions to redress the grievances of such consumers. The attempt of the petitioner by producing 3 or 4 bills of the domestic consumers is to canvas that the KSEB Limited has calculated the average meter reading taking into account the consumption of 76 days due to the lockdown restrictions consequent to the pandemic COVID-19. It is true, going by the provisions of the Supply Code, 2005 and Supply Code, 2014 the Board is to take the average bimonthly consumption so far as the domestic consumers are concerned, which is the recognized method. However, it is explained by the Board in its statement that such a situation has arisen due to the emergent circumstances of COVID-19 pandemic, and due to the lockdown restrictions issued by Government of India, the Board officials were interdicted from entering the premises of the consumers to carry out the meter reading. On evaluating the legal and factual situations available on board we are of the considered opinion that the public interest litigation is not a solution to rectify any defects occurred in the bimonthly bills issued, even taking into account the fact that 76 days reading was taken for issuing the bimonthly bill. Anyhow, no documents are produced by the petitioner reposing confidence in this court to

visualize and think that all the bills issued by the KSEB Limited to its entire domestic consumers are bad and irregular. Petitioner has only pointed out the case of four domestic consumers including that of the petitioner who is alleged to be occupying the building of one A.V.Kuruvila, who is the registered consumer under the Board. Normally, a public interest litigation is entertained by the constitutional courts filed for and on behalf of such group of persons in a society who are unable to approach the court for various reasons, and on a common issue beneficial to the the public at large, on the basis of the facts and figures produced before the court thus enabling the court to act upon the same and grant reliefs. A question regarding the Associations approaching the court by filing public interest litigations in respect of alleged bills was considered by a Division Bench of this court in ***Kerala State Electricity Board, Trivandrum v. Kerala High Tension Industrial Electricity Consumers Association reported in 2016 (5) KHC 634*** and held that since grievance of the affected consumers is an individual grievance, it could not be collectively considered, and such individual grievances are to be agitated only by the consumers concerned, and the Association could not collectively maintain a writ petition as a representative action, on behalf of all consumers and held that the writ petition was not maintainable under law. Likewise, yet another Division Bench of this court in ***Self Financing Arts and***

Science College Management Welfare Association v. MG University, Kottayam and others reported in 2016 (4) KHC 293 had occasion to consider the issue of filing public interest litigation by Association representing managements of self financing arts and science colleges, and held that a public interest writ petition is not maintainable and if the members of the association has any grievance in the matter, they are at liberty to approach the High Court under Article 226 of the Constitution of India. It was also held there under that if there is any illegal invasion to the fundamental rights, it can only be the fundamental rights of a citizen in contemplation of law and the appropriate orders, if any, on the basis of the grievance highlighted by such persons can be granted by the court individually on the basis of the foundations made in the petition under Article 226 of the Constitution of India. A Division Bench of this court as early as in 1989 in ***Porathissery Panchayat Tax Payer's Association v. Executive Officer reported in 1989 (1) KLT 849*** had occasion to consider the locus standi for a collective action by the taxpayers association, challenging revision of building tax of all the houses in the panchayat, and held that when a number of individuals are affected by an official act, ordinarily a legal proceedings can be brought , only if all such persons joined in the proceedings by name except where the law confers upon them, a legal personality as a collective body such as an association which is

incorporated by statute or formed under a statute. It was also held thereunder that the individual building tax could be challenged by the members individually through the forum prescribed under the relevant statute.

7. Petitioner has neither pleaded his technical expertise nor produced any documents enabling this court to consider as to whether such aspects put forth by the petitioner are sufficient materials to overawe the pleadings put forth by the KSEB.

8. In this context, it is only relevant that some of the judgments of the Apex Court in regard to the parameters for filing public interest litigations are considered. In ***Sanchidanand Pandey and another v. State of West Bengal and others*** reported in (1987) 2 SCC 295 Apex Court had considered the parameters to be followed in public interest litigations and held that it is only when courts are appraised of gross violation of fundamental rights by a group or a class action on when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. In *Janata Dal v. H.S.Chowdhary and Others* reported in (1992) 4 SCC 305 apex court had opined that only a person acting bona fide and having

sufficient interest in the proceeding of public interest litigation will alone have locus standi and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. In *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others* reported in (1998) 8 SCC 1 apex court considered the issue with respect to issuance of mandamus when the State fails to perform its duty and opined that existence of alternate remedy albeit is no bar to exercise jurisdiction under Article 226 of the Constitution of India but ordinarily it will not do so unless it is found that an order has been passed wholly without jurisdiction or contradictory to the constitutional or statutory provisions or where an order has been passed without complying with the principles of natural justice.

9. Therefore the afore propositions make it clear that the intention behind a public interest litigant should be bonafide and honest and it should not be for any political or ulterior motives and gains. Even the concept of the public interest litigation has started with the intention to protect the interest of such persons or group who are unable to access the court for various reasons including economic and financial. It is also a well settled position in law that unless and until relevant, substantial and reliable materials are produced before the court by the public

interest writ petitioner to substantiate the pleadings put forth, the constitutional courts are not obligated to dig materials, conduct a roving enquiry and then find out a case for such public interest litigant. In our considered opinion, the case put forth by the writ petitioner is of a typical nature as that considered by the afore quoted Division Bench judgments of this court, and also without adequate materials to show that a substantial number of domestic consumers are affected by the irregular bimonthly bills issued by the KSEB Limited. In that view of the matter, we have no hesitation to hold that the writ petition filed by the petitioner styled as a public interest litigation is not sustainable in law. Anyhow, the petitioner has also raised a contention that the bimonthly billing system adopted by the KSEB Limited is without securing approval from the third respondent Regulatory Commission. However, going by the provisions of the Supply Code, 2005 and the Supply Code, 2014, we are satisfied that the methodology adopted by the KSEB Limited is approved as per the provisions of the Act and the Code. Even though it is stated that the Board has not applied for the approval of the Regulatory Commission, by virtue of the provisions of the Code, the bimonthly system adopted by the Board is well recognized. Moreover, the provisions of Act, 2003 protected the bimonthly billing system adopted by the KSEB Limited from the year 1990. Taking into account the said legal and factual circumstances also,

we are of the view no case is made out by the petitioner on merits. However, from the statement filed by the KSEB Limited, it is evident that the KSEB has recognized the difficulties faced by its domestic consumers due to the situations prevailing in the community due to the pandemic COVID 19, appropriate steps were taken to reduce the bill, grant rebate and permit the consumers to pay the bills issued in reasonable instalments.

10. Thus looking from any angle it cannot be said that petitioner has made out any case justifying interference under Article 226 of the Constitution of India to secure the reliefs sought for in a public interest litigation. Resultantly, the writ petition fails and accordingly it is dismissed.

Pending interlocutory applications, if any, shall stand closed.

SD/-

S.MANIKUMAR
CHIEF JUSTICE

SD/-

SHAJI P. CHALY
JUDGE

jes

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 02ND DAY OF JULY 2020 / 11TH ASHADHA, 1942

W.P.(C).No.11282 OF 2020(S)

PETITIONER:

VINAY KUMAR M.C, AGED 34 YEARS
S/O.M.C.NATHAN, MOOTHEDATHU HOUSE, THRIKKALATHOOR P.O.,
MUVATTUPUZHA, PIN-683 541, ERNAKULAM DISTRICT.

BY ADVS.
SRI.MATHEW A KUZHALANADAN
SRI.K.R.ARUN KRISHNAN
SRI.SUDEEP ARAVIND PANICKER

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY,
THIRUVANANTHAPURAM, PIN-695 001.
- 2 KERALA STATE ELECTRICITY BOARD LIMITED,
REGISTERED OFFICE, VYDYUTHI BHAVANAM, PATTOM,
THIRUVANANTHAPURAM-695 004,
REPRESENTED BY TIS CHAIRMAN.
- 3 KERALA STATE ELECTRICITY REGULATORY COMMISSION,
K.P.F.C.BHAVANAM, C.V.RAMAN PILLAI ROAD, VELLYAMBALAM
THIRUVANANTHAPURAM-695 010, REPRESENTED BY ITS CHAIRMAN.

SR.GP SRI.SURIN GEORGE IPE FOR R1,
SRI.SUDHEER GANESH KUMAR, Sr. SC FOR KSEB
R3 BY SRI.VIPIN P.VARGHESE, SC, KSERC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-06-2020, THE
COURT ON 02-07-2020 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 A TRUE COPY OF TARIFF AND TERMS AND CONDITIONS FOR RETAIL SUPPLY OF ELECTRICITY BY KERALA STATE ELECTRICITY BOARD LIMITED AND ALL OTHER LICENSEES WITH EFFECT FROM 08.07.2019 TO 31.03.2019 DATED 08.07.2019.
- EXHIBIT P2 A TRUE COPY OF RELEVANT PAGES OF THE ORDERS IN OA NO.15/2018 KERALA STATE ELECTRICITY REGULATORY COMMISSION DATED 08.01.2019.
- EXHIBIT P3 A TRUE COPY OF THE ELECTRICITY BILL OF ONE VIJAYAN.K.G. DATED 11.05.2010.
- EXHIBIT P4 A TRUE COPY OF THE ELECTRICITY BILL OF HAMZAILLIKKAL DATED 19.05.2020.
- EXHIBIT P5 A TRUE COPY OF THE ELECTRICITY BILL OF ONE KURUVILA.A.V. DATED 20.05.2020.

RESPONDENT'S EXHIBITS:

- EXHIBIT R2A THE TRUE COPY OF THE REVISED BILL ISSUED TO VIJAYAN.T.G.

// True Copy //

P.S. to Judge