



2026:KER:56140

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MRS. JUSTICE PREETA A.K.

TUESDAY, THE 28TH DAY OF JULY 2026/6TH SRAVANA, 1948

W.A.NO.1718 OF 2022

AGAINST THE JUDGMENT DATED 14.10.2022 IN W.P(C).NO.17619 OF 2011
OF HIGH COURT OF KERALA

APPELLANT/WRIT PETITIONER:

G. NAGENDRAN,
AGED 55 YEARS
BHARAT WHEAT PRODUCTS (P) LTD,
IDA, EDAYAR, BINANIPURAM P.O, ERNAKULAM, PIN - 683 502

BY ADV.SRI.C.K.KARUNAKARAN

RESPONDENTS/RESPONDENTS:

- 1 KERALA STATE ELECTRICITY BOARD
VYDHUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM,
PIN - 695004
- 2 ASSISTANT ENGINEER,
ELECTRICIAL SECTION, KERALA STATE ELECTRICITY BOARD,
EDAYAR (MUPPATHADAM), ERNAKULAM DT., PIN - 695004

BY ADV.SRI.RAJU JOSEPH (SR.)

BY ADV.SRI.C.JOSEPH ANTONY

BY ADV.SRI.JOHN MANJOORAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
21.07.2026, THE COURT ON 28.07.2026 DELIVERED THE FOLLOWING:



2026:KER:56140

"C.R."**J U D G M E N T****Dr. A.K. Jayasankaran Nambiar, J.**

The writ petitioner in W.P.(C).No.17619 of 2011 is the appellant before us impugning the judgment dated 14.10.2022 of a learned Single Judge dismissing his writ petition.

2. The brief facts necessary for disposal of this Writ Appeal is as follows:

The appellant/writ petitioner was the auction purchaser of an extent of land and other assets auctioned by the official liquidator in C.P.No.11 of 2003 based on orders from the Company Court. Pursuant to the auction sale, and as directed by the Company Court, Ext.P6 sale deed was executed for a part of the land and buildings purchased in favour of the appellant, by the official liquidator, and the assets were handed over to the appellant. A perusal of Ext.P6 sale deed would reveal that while the sale of the assets of the erstwhile company was on "*as is where is and whatever there is*" basis, the appellant was to take those assets and hold them as "*absolute owner with title, possession and enjoyment without any encumbrance or without any statutory liabilities of the vendor company*".



2026:KER:56140

3. After the purchase aforementioned, the appellant established a flour mill on the said land and applied to the Kerala State Electricity Board [hereinafter referred to as the "KSEB"] for electricity connection to the new factory. The KSEB, however, took the stand that the new connection would not be granted unless the appellant paid an amount of Rs.36,70,200/- that was outstanding as arrears from the erstwhile company in liquidation. It was aggrieved by the said stand of the KSEB that the appellant approached the writ court seeking a direction to the KSEB to grant the new electric connection without insisting on the payment of the dues outstanding from the erstwhile consumer. The contention of the appellant before the writ court was essentially twofold. Firstly, it was contended that the KSEB had already pursued its claim for arrears of electricity charges from the company under liquidation, which was the earlier consumer, in the liquidation proceedings and was admitted as an ordinary/unsecured creditor for the said amount in the liquidation proceedings. Having opted to be a party in the winding up proceedings pertaining to the erstwhile consumer, the KSEB could not insist on recovery of the same amounts from the appellant. Secondly, it was contended that, as per the statutory provisions under the Electricity Act, 2003 read with the Kerala Electricity Supply Code, 2005 and the Kerala State Electricity Board Terms and Conditions of Supply, 2005, the KSEB was statutorily prevented from recovering the dues of a previous consumer from a subsequent owner of the premises.



2026:KER:56140

4. At the time of admission of the writ petition, an interim order was passed on 05.07.2011, directing the KSEB to provisionally grant a service connection without insisting on payment of arrears of the erstwhile consumer. The said service connection was provided, and the flour mill became operational. Thereafter, the writ petition was taken up for final hearing and dismissed by the learned Single Judge through the judgment impugned in this writ appeal. The learned Single Judge found that in view of the provisions of Regulation 19 of the Kerala State Electricity Board Terms and Conditions of Supply, 2005, all dues to the KSEB from a consumer were to be a first charge on the consumer's assets, and hence, notwithstanding the specific provisions in the Electricity Act, 2003, the Kerala Electricity Supply Code, 2005 and the Kerala State Electricity Board Terms and Conditions of Supply, 2005, that prohibited the KSEB from recovering the arrears of the previous consumer from the subsequent consumer, the KSEB would enforce its charge over the assets against the subsequent owner of the assets. The learned Single Judge also found that KSEB was not a party to the winding up proceedings, and since the sale of assets to the appellant was on "*as is where is and whatever there is*" basis, the appellant took the assets along with the charge thereon, and hence, he was obliged to pay the dues of the erstwhile consumer as demanded by the KSEB.

5. In the appeal before us, we have heard Sri.C.K. Karunakaran, the learned counsel appearing on behalf of the appellant and Sri.Raju



2026:KER:56140

Joseph, the learned senior counsel, assisted by Sri.C.Joseph Antony, the learned counsel appearing for the respondent/KSEB. We have also gone through the pleadings of the case.

6. On a consideration of the rival submissions, we are of the view that, for the reasons that are to follow, this writ appeal must succeed.

7. The statutory provisions that govern the application for a new electricity connection submitted by the appellant in 2011 are those contained in the Electricity Act, 2003, the Kerala Electricity Supply Code, 2005 and the Kerala State Electricity Board Terms and Conditions of Supply, 2005. The relevant provisions are as under:

The Electricity Act, 2003:

43. Duty to supply on request:--- (1) [Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

Explanation.- For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) :

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the



2026:KER:56140

period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

50. The Electricity Supply Code: - The State Commission shall specify an electricity supply code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity; measures for preventing tampering, distress or damage to electrical plant, or electrical line or meter; entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter; entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters.

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."

Section 181 deals with the Powers of the State Commission to make regulations.

The Kerala Electricity Supply Code, 2005:

12. Dues of previous consumer:- If a purchaser of a premise requires to have a new connection, as the earlier connection has already dismantled after disconnection, the arrear, if any, shall be realised from the previous owner/occupier of the premises and not from the purchaser.



2026:KER:56140

The Kerala State Electricity Board Terms and Conditions of Supply, 2005:

7. Dues of previous consumers:- If a purchaser of a premise requires to have a new connection, as the earlier connection has already been dismantled after disconnection, the arrear, if any, shall be realized from the previous owner/occupier of the premises and not from the purchaser.

19. Agreement for Service Connection.- (1) Along with remittance of security deposit applicable as mentioned in Sections 15 and 16, the consumer shall execute the service connection agreement. The premises shall not be connected unless and until the agreement is executed. Thereafter, the service shall be effected strictly in the order of priority. The consumer will be intimated the date and time at which the Board is intending to effect the service, when the consumer and the wiring contractor or his authorized agent may be present at the premises.

(2) The service connection agreement executed by an authorized allottee within the premises owned by a Central/State Govt./Public Sector Undertaking/Co-operative Societies/Local Bodies shall be co-guaranteed by the authority effecting such allotment, failing which the procedure applicable to the service connection applied for by the occupier/tenant shall be followed.

(3) When there is transfer of ownership or right of occupancy of the premises, the registered consumer shall intimate the transfer of right of occupancy of the premises within 7 days to the Asst. Engineer/Asst. Executive Engineer concerned. On such intimation having been received, the service shall be disconnected, after giving notice to the occupants. If the transferee desires to enjoy service connection, he shall pay the dues to the Board and apply for transfer of ownership of service connection within 15 days and execute fresh agreement and furnish additional security.

(4) All dues to the Board from a consumer shall be the first charge on the assets of the consumer. All dues including interest shall be realized as arrears of revenue recovery.

(5) When there are changes in the contract demand/connected load, tariff or provisions in the 'Kerala State Electricity Board Terms and Conditions of Supply 2005, the Board may require in writing inform the consumer to execute a fresh agreement in the form applicable within thirty days of surcharge and the consumer shall comply with the same.

(6) In the event of no formal contract having been entered into between the Board and the consumer, the latter after once the supply of electricity has been commenced, shall be bound by the Terms and Conditions of Supply 2005 herein set-forth. The consumer shall not refuse to enter into an agreement, if so required by the Board at any time after the supply is commenced, notwithstanding that the same has not been entered into before the supply has commenced. If the consumer fails to execute the agreement, the Board shall dismantle the services without notice and recover the dues by Revenue Recovery proceedings. In such cases, the date of commencement of contract in all cases shall be the date of commencement of supply to the consumer. If the date of commencement of supply cannot be established, the consumer shall be liable to pay the current charges plus interest for a period of six months immediately preceding the date of detection of such illegal consumption of energy.

(7) If any consumer terminates his agreement within the period of



2026:KER:56140

agreement (or where no formal agreement is tendered if the supply is discontinued within the period which would have been applicable if an agreement had been tendered) he/she shall be liable to pay the minimum charges for the rest of the period of the agreement.

(8) The officers of the Board authorised to execute service connection agreement are as follows:-

E.H.T.	Chief Engineer (Distribution)
H.T.	Deputy Chief Engineer (Distribution)
Street Light	Executive Engineer (Distribution)
L.T. Three phase	Assistant Executive Engineer (Distribution)
L.T. Single phase	Assistant Engineer (Distribution)

8. At the time of considering the application of the appellant for the electricity connection, the earlier connection had already been dismantled, and hence, what the appellant was seeking from the KSEB was a new connection and not a re-connection of the old connection. On the date of the application, the provisions of Section 43 of the Electricity Act, read with Regulation 12 of the Kerala Electricity Supply Code and Regulation 7 of the Kerala State Electricity Board Terms and Conditions of Supply, 2005 clearly envisaged that the dues of an erstwhile consumer could not be recovered from a subsequent consumer in the same premises. The creation of the charge under Regulation 19 of the Kerala State Electricity Board Terms and Conditions of Supply, 2005 could only be over such assets as were covered by an agreement for service connection entered into after the coming into force of the terms and conditions of the Kerala State Electricity Board Terms and Conditions of Supply, 2005. As the arrears in this case pertain to the erstwhile owner of the premises whose agreement for service connection was entered into prior to 2005, the instant was not a case



2026:KER:56140

where there was an enforceable charge on the assets in respect of the dues of the erstwhile owner/consumer.

9. Even otherwise, it is apparent from the pleadings that KSEB was indeed a participant in the liquidation proceedings pertaining to the erstwhile consumer company, and it had even lodged a claim in the arrear amounts before the official liquidator in the proceedings before the Company Court. That being the case, and when the assets were sold to the appellant herein in an auction sale directed by the Company Court, the KSEB could not have indirectly converted their claim as an unsecured creditor to a preferential claim for the said amount ignoring the preferential claims of other secured creditors seeking to recover their dues from the sale proceeds of the assets of the company in liquidation. It is also significant that Ext.P6 sale deed clearly stipulates that the appellant took and held the assets purchased by him "without any encumbrance and without any statutory liability of the vendor company". The KSEB was therefore estopped from recovering its dues from the appellant.

The upshot of the above discussion is that, we hold that the KSEB cannot seek to recover the arrears pertaining to the erstwhile consumer from the appellant herein, and must necessarily await its turn along with other creditors in the liquidation proceedings for realising the arrear amounts from the company under liquidation. This legal position would



2026:KER:56140

follow even from the statutory provisions under the Electricity Act, 2003, the Kerala Electricity Supply Code, 2005 and the Kerala State Electricity Board Terms and Conditions of Supply, 2005 that governed the grant of electricity connection to the appellant in 2011. We therefore set aside the impugned judgment of the learned Single Judge, and allow this Writ Appeal with consequential reliefs to the appellant.

**Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE**

**Sd/-
PREETA A.K.
JUDGE**

prp/



2026:KER:56140

APPENDIX OF W.A.NO.1718 OF 2022

PETITIONER'S ANNEXURES:

ANNEXURE A1	TRUE COPY OF LETTER NO.DB15/GNL/LSD-ALU/56/2011-2-12 DATED 13.06.2011 OF ASSISTANT EXECUTIVE ENGINEER.
ANNEXURE A2	TRUE COPY OF NOTICE OF REJECTION OF PROOF OF DEBT DATED 06.03.2012 RELATING TO THE 1ST RESPONDENT.
ANNEXURE A3	TRUE COPY OF NOTICE OF REJECTION OF PROOF OF DEBT DATED 23.06.2011 RELATING TO KSIDC
ANNEXURE A4	TRUE COPY OF NOTICE OF DIVIDEND DATED 03.10.2013 RELATING TO KSIDC ALONG WITH ACKNOWLEDGEMENT FOR RECEIPT.
ANNEXURE A5	TRUE COPY OF TENDER NOTICE DATED 28.04.2010.
COPY OF I.A	TRUE COPY OF I.A NO.1 OF 2022 IN W.P.(C).NO.17619 OF 2011.

RESPONDENTS ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE