

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

WP(C).No.209 of 2013 (A)

PETITIONER:

**M/S.RELIANCE SECURITY AGENCY,
PREM BUILDING,KARUNAGAPPALLY,
KOLLAM,REPRESENTED BY ITS MANAGING PARTNER
T.K.SAMBASIVAN**

BY ADV. SRI.D.KISHORE

RESPONDENTS:

- 1. BHARAT SANCHAR NIGAM LIMITED,
REPRESENTED BY ITS GENERAL MANAGER,
TELECOM DISTRICT,KOLLAM-190001.**
- 2. THE ASSISTANT GENERAL MANAGER (ADMINISTRATION),
BHARAT SANCHAR NIGAM LIMITED,
OFFICE OF THE GENERAL MANAGER,
TELECOM DISTRICT,KOLLAM-190001 .**
- 3. THE ASSISTANT GENERAL MANAGER(HR AND ADMINISTRATION),
BHARAT SANCHAR NIGAM LIMITED,
OFFICE OF THE GENERAL MANAGER,
TELECOM DISTRICT,KOLLAM-190001 .**
- 4. THE REGIONAL PROVIDENT FUND COMMISSIONER,
OFFICE OF THE REGIONAL PROVIDENT FUND COMMISSIONER,
KOLLAM-190001 .**
- 5. THE ASSISTANT PROVIDENT FUND COMMISSIONER (C AND R)
SUB REGIONAL OFFICE,EMPLOYEES PROVIDENT FUND
ORGANIZATION,KOLLAM-190001 .**

**R1 TO R3 BY SRI.MATHEWS K.PHILIP,SC, BSNL
R4 & R5 BY SRI.PIRAPPANCODE V.S.SUDHIR,SC,EPF ORGN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

W.P(C) NO.209/2013

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:TRUE COPY OF THE PROCEEDINGS NO.ST-E/TENDER/2012-2013/50
DATED 30.5.2012 OF THE 2ND RESPONDENT.

EXT.P2:TRUE COPY OF THE PROCEEDINGS NO.ST-E/TENDER/2010-2011/52
DATED 28.7.2012 OF THE 2ND RESPONDENT.

EXT.P3:TRUE COPY OF THE PROCEEDINGS NO.ST.E/RELIANCE/BILL/2012-13/18
DATED 17.10.2012 OF THE 3RD RESPONDENT.

EXT.P4:TRUE COPY OF THE ANNUAL STATEMENT OF CONTRIBUTION OF THE
PETITIONER TOWARDS EMPLOYEES FUND FROM 1.4.2011 TO 31.3.2012.

EXT.P5:TRUE COPY OF THE LETTER DATED 29.10.2012 SUBMITTED BY THE
PETITIONER BEFORE THE 3RD RESPONDENT.

EXT.P6:TRUE COPY OF THE PROCEEDINGS NO.STE/RELIANCE/BILLS/2012-
2013/22 DATED 26.11.2012 OF THE 2ND RESPONDENT.

EXT.P7:TRUE COPY OF THE LETTER DATED 10.12.2012 SUBMITTED BY THE
PETITIONER BEFORE THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS:

EXT.R1(a):TRUE COPY OF THE CLAUSE 18.3 OF THE TENDER DOCUMENT.

EXT.R1(b):TRUE COPY OF THE ORDER ISSUED BY THE ASSISTANT PROVIDENT
FUND COMMISSIONER DATED 22.8.2012.

EXT.R1(c):TRUE COPY OF THE LETTER ISSUED BY THE AGM BSNL TO THE
PETITIONER DATED 3.9.2012.

EXT.R1(d):TRUE COPY OF THE LETTER ISSUED BY THE AGM,BSNL TO THE
ASSISTANT PROVIDENT UND COMMISSIONER.

EXT.R1(e):TRUE COPY OF THE SUMMONS ISSUED BY THE ASSISTANT
PROVIDENT FUND COMMISSIONER TO THE BSNL.

EXT.R1(f):TRUE COPY OF THE LETTER ISSUED BY THE AGM,BSNL TO THE
ASSISTANT PROVIDENT FUND COMMISSIONER DATED 24.1.2014.

EXT.R1(g):TRUE COPY OF THE LETTER ISSUED BY THE ASSISTANT PROVIDENT
FUND COMMISSIONER TO BSNL DATED 7.2.2014.

//TRUE COPY//

P.S. TO JUDGE

K. VINOD CHANDRAN, J

W.P(C) No.209 of 2013

Dated this the 07th day of January, 2015

J U D G M E N T

The petitioner was a contractor under the first respondent. Admittedly the contract period is over. However, the security amount deposited by the petitioner, on awarding of the contract, was forfeited by the 1st respondent for remittance to defaulted Provident Fund Contributions which were due under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short "EPF & MP Act").

2. Later on, there were two other contracts floated by the 1st respondent, for which also, the petitioner applied; but was not awarded the work. The dispute raised herein is the retention of the Earnest Money Deposit (EMD) which the petitioner made in pursuance of the tender application in the two subsequent notifications. An amount of Rs.3,76,960/- relating to tender for Infra structure maintenance and a further amount of Rs.73,660/- relating to tender for sweeping and cleaning, were the amounts so retained by the 1st

respondent.

3. The learned counsel appearing for the 1st respondent points to the communication of the EPF Organisation produced at Ext.R1(g) wherein the dues are said to be more than Rs. 1 crore. Hence, the 1st respondent contends that the amounts now retained has to be paid to the Employees Provident Fund Organisation and cannot be returned to the petitioner.

4. The EPF Organisation has filed a counter affidavit, wherein, Rs.1,70,069/-, is stated to be the amount due for the period between 02/2010 to 11/2011. Ext.R1(g) shows that there are amounts due for the subsequent period also. In any event, it is not clear as to what is the exact amount due to the Employees Provident Fund Organisation. The petitioner also contends that the petitioner has made substantial payments towards the dues under the EPF & MP Act. In such circumstances, the respondents 4 and 5 are directed to compute the dues of the petitioner as on today, within a period of three weeks from today and communicate the same to the 1st respondent. The 1st respondent shall then,

remit the amounts so claimed by the respondents 4 and 5 to the EPF Organisation and if any balance is available, the same shall be refunded to the petitioner within a period of two weeks from the date of payment to the EPF Organisation. If the amounts demanded by the EPF Organisation is more than that retained by the 1st respondent, necessarily, the entire amounts retained would have to be paid to the EPF Organisation and the EPF Organisation would have left the remedies to recover the balance amount, if any, from the petitioner.

Writ petition is disposed of.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma

//true copy//

P.A to Judge