

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

WP(C).No. 2588 of 2015 (W)

PETITIONER(S):

**SHIJU MUHAMMED, AGED 42 YEARS
S/O.LATE MUHAMMED HANEEFA
ANZARI HARDWARES AND PAINTS, KALLAMBALAM
THIRUVANANTHAPURAM.**

**BY ADVS.SRI.R.MANOJ
SMT.SINDHU MANOJ
SMT.P.P.BLESSY MOL**

RESPONDENT(S):

- 1. BHARATH SANCHAR NIGAM LIMITED
(A GOVERNMENT OF INDIA ENTERPRISES) REPRESENTED
BY ITS GENERAL MANAGER
STATUE JUNCTION, THIRUVANANTHAPURAM-695001.**
- 2. RAMESH RAJ.S.N.
ARBITRATOR AND DGM (NP & D1), O/O.GM (NP-CM) BSNL
RTTC COMPLEX, KAIMANAM, TRIVANDRUM-695040.**
- 3. THE DISTRICT COLLECTOR
THIRUVANANTHAPURAM-695001.**
- 4. THE DEPUTY TAHSILDAR (REVENUE RECOVERY)
TALUK OFFICE, VARKALA, 696161.**

**R1 BY ADV. SMT.E.V.MOLY, SC, BSNL
R3 & 4 BY GOVERNMENT PLEADER SRI.SHYSON P.MANGUZHA**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 06-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1: TRUE COPY OF THE AWARD OF THE 2ND RESPONDENT DATED 12/12/2014.**
- EXHIBIT-P2: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 03/01/2014.**
- EXHIBIT-P3: TRUE COPY OF THE NOTICE ISSUED TO THE PETITIONER BY THE 4TH RESPONDENT UNDER SECTION 7 OF THE REVENUE RECOVERY ACT DATED 08/12/2014.**
- EXHIBIT-P4: TRUE COPY OF NOTICE ISSUED TO THE PETITIONER UNDER SECTION 34 OF THE REVENUE RECOVERY ACT DATED 08/12/2014.**
- EXHIBIT P5: COPY OF EXHIBIT P2 WHICH CONTAINS THE ORIGINAL SEAL AFFIXED BY BSNL AT THE TIME OF ITS RECEIPT**

RESPONDENT(S)' EXHIBITS

- EXHIBIT R1(A): COPY OF ARBITRATION AWARD DATED 16/5/2006**
- EXHIBIT R1(B): COPY OF THE COMMON ORDER DATED 12/1/10**
- EXHIBIT R1(C): COPY OF THE DEMAND NOTICE ISSUED TO THE DEALER DT 22/9/05**
- EXHIBIT R1(D): ORDER OF HIGH COURT IN WPC.28191/05**
- EXHIBIT R1(E): COPY OF THE TERMINATION NOTICE DATED 17/1/05 ISSUED TO THE DEALER.**

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No. 2588 of 2015 (W)

.....
Dated this the 6th day of April, 2015

JUDGMENT

The petitioner, who was a distributor of SIM Cards under the respondent company, is aggrieved by the encashment of the performance bank guarantee by the respondents at a stage, when, according to the petitioner, arbitration proceedings were pending.

2. In the writ petition, the claim of the petitioner is for an adjustment of the interest, that accrued on the amount covered by the performance bank guarantee, from the date of its encashment by the respondent company till the date of passing of the final award in the arbitration. It is his contention that, inasmuch as the respondent company had encashed the performance bank guarantee prematurely, the interest that accrued on the said bank guarantee amount, from the date of its encashment to the date of the award, should be adjusted towards the amounts finally found due and payable by him in terms of the arbitration award.

3. A counter affidavit has been filed on behalf of the 1st respondent wherein it is clearly stated that, in the arbitration proceedings, one of the issues that came up for consideration was whether the

termination of dealership, and the encashment of the bank guarantee by the respondent company, were justifiable as per the terms and conditions of the agreement. It is pointed out that, this issue with regard to the legality of the respondent's action of encashing the bank guarantee, was found in favour of the respondent company by the arbitration award itself. It is, therefore, stated that, the arbitrator itself had found that, the encashment of the bank guarantee by the respondent company was in order, and hence, there was no question of computing an interest in respect of the amount covered by the bank guarantee and setting off the same against the amount found to be payable by the petitioner.

4. I have heard Sri.Manoj R., the learned counsel for the petitioner, Smt.E.V.Moly, the learned standing counsel for the 1st respondent company and also Sri.Shyson P.Manguzha, the learned Government Pleader for the 3rd and 4th respondents.
5. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I find that, the issue with regard to the encashment of the bank guarantee by the respondent company, had already been decided by the arbitrator in the arbitrary proceedings, where it was also found that, there were residual amounts due from the petitioner to the

respondent company. The claim of the petitioner for a set off of the interest that accrued on the amount covered by the bank guarantee, from the date of its encashment till the date of the award, proceeds on the assumption that the encashment of the bank guarantee by the respondent company was illegal. A perusal of the findings of the arbitrator would clearly reveal that, the issue regarding encashment of the bank guarantee of the respondent company had been gone into by the arbitrator, and it was found to be legal and proper. In that view of the matter, the encashment of the bank guarantee by the respondent company cannot be said to be illegal, and the question of setting off any interest on the said amount against the amount found due and payable by the petitioner does not arise for consideration.

The writ petition fails and it is accordingly dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/06/04/

