IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

WP(C).No. 8827 of 2010 (C)

PETITIONER(S):

1. **K.K.RAMAKRISHNAN, S/O.KUTTAPPAN,**
   AGED 66 YEARS, RESIDING AT KATHANAMPARAMBIL HOUSE
   THERATHURUTH, PUTHAVELIKKARA, NORTH KUTHIYATHODE P.O.
   ERNAKULAM DIST.-683 594.

2. **ABDUL SAMMAD K.K., S/O.KHADAR**
   AGED 45 YEARS, RESIDING AT KUNNATHU VEEDU
   PALAPPRASSERY, CHENGAMANADU P.O.
   ERNAKULAM DISTRICT-683 578.

BY ADVS.SRI.V.S.CHANDRASEKHARAN
SMT.LEKSHMI SWAMINATHAN

RESPONDENT(S):

1. **EXECUTIVE ENGINEER, KERALA STATE**
   ELECTRICITY BOARD, MAJOR ELECTRICAL SECTION, PIRAVOM
   ERNAKULAM DISTRICT.

2. **ASSISTANT EXECUTIVE ENGINEER,**
   ELECTRICAL SUB DIVISION, KERALA STATE
   ELECTRICITY BOARD, PIRAVOM, ERNAKULAM DISTRICT.

BY ADV.S.SHARAN, STANDING COUNSEL, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO.8827/2010

APPENDIX

PETITIONER'S EXHIBITS:

P1 : COPY OF THE LETTER ISSUED TO THE 1ST PETITIONR BY THE 2ND RESPONDENT

P2 : COPY OF the LETTER ISSUED TO THE 2ND PETITIONER BY THE 2ND RESPONDENT

P3 : COPY OF THE 1ST PAGE OF THE FORMAT OF THE MINIMUM GUARANTEE AGREEMENT TO BE EXECUTED BY A PERSON SEEKING ELECTRICLA CONNECTION TO HIS INDUSTRIAL UNIT

RESPONDENTS' EXHIBITS:

R1(A) : COPY OF THE MINIMUM GUARANTEE AGREEMENT EXECUTED BY THE PETITIONERS

//TRUE COPY//

P.A. TO JUDGE

JVU

ANIL K. NARENDRAN, J.

W.P.(C) No.8827 of 2010

Dated this the 28th day of May, 2015

JUDGMENT

The petitioners started a bricks manufacturing unit in Piravom Grama Panchayat in the year 2003. The petitioners approached the 2nd respondent for obtaining electric connection to their small scale industrial units. Pursuant to the request made by the petitioners, the 2nd respondent instructed the petitioners to execute a minimum guarantee agreement for availing electric connection to their industrial units. Pursuant to the said direction, the petitioners have executed Ext.R1(a) minimum guarantee agreement. Later, the petitioners were issued with Exts.P1 and P2 letters, as per which they were asked to remit a sum of Rs.176,141/- each towards minimum guarantee amount.

2. A reading of Exts.P1 and P2 would show that in order to get electric connection to the premises, the petitioners have executed Ext.R1(a) minimum guarantee agreement with the 2nd respondent agreeing to remit a sum of Rs.25,163/- each per year

for a period of 7 years. As can be seen from Exts.P1 and P2, based on the minimum guarantee agreement executed by the petitioners, the Kerala State Electricity Board upgraded the existing 100 KVA transformer of North Kalampoor with 160 KVA transformer and thereafter, the petitioners were issued with monthly bills for a minimum of Rs.2,097/- each towards minimum guarantee amount, which they failed to remit and it was in such circumstances, recovery proceedings were proposed against the petitioners by Exts.P1 and P2.

3. According to the petitioners, they never availed any electric supply from the 2nd respondent for running their industrial units as the Piravom Grama Panchayat rejected their application for renewal of licence to the industrial units and in such circumstances, they were forced to close down their units. Therefore, according to the learned counsel for the petitioners, the closure of the industrial unit is for reasons beyond the control of the petitioners and hence, they are not liable to pay the minimum guarantee amount in terms of the minimum guarantee agreement executed with the KSEB. In such circumstances, the petitioners have moved this Court in this writ petition seeking a writ of certiorari to quash Exts.P1 and P2 and

also seeking a declaration that they are not liable to pay any amount demanded in the aforesaid notices.

4. By order dated 07.06.2010, this Court directed the respondents to maintain 'status quo' for a period of two weeks, which order was extended until further orders by order dated 08.10.2010.

5. A counter affidavit has been filed on behalf of the respondents, in which it was stated that on 21.11.2005, the petitioners applied for 25 HP each (total 50 HP) power allocation for their wire cut brick manufacturing units and also submitted a joint minimum guarantee application expressing their consent to bear the cost required to effect supply of electricity. The 1st respondent issued the Administrative Sanction amounting to Rs.1,83,000/- for enhancing 100 KVA transformer to North Kalampoor to 160KVA for industrial purpose on minimum guarantee basis in favour of the petitioners. A reading of the counter affidavit filed by the respondents would show that in the sanctioned estimate, the cost of the transformer alone was mentioned. The petitioners jointly executed minimum guarantee agreement No.02/05-06 in the office of the 2nd respondent and thereafter, the Board installed a 160 KVA transformer after

replacing the existing one. According to the respondents, the enhancement of the capacity of the transformer necessitated exclusively and only for effecting power supply to the industrial units of the petitioners.

6. A reading of the counter affidavit filed on behalf of the respondents would further show that on 05.03.2007, a registered letter was sent to the petitioners requesting them to submit the wiring completion reports and to avail supply otherwise unconnected minimum will be charged without further notice. Thereafter, on 01.09.2007, invoices amounting to Rs.6.291/- were sent to each of the petitioners being the unconnected minimum charges @ Rs.2,097/- per month for the months of June to August 2007. But the petitioners failed to remit any amount and it was in such circumstances, Exts.P1 and P2 notices were issued intimating that if the petitioners failed to remit Rs.1,76,141/-each, revenue recovery proceedings will be initiated against them. The specific stand taken by the respondents in their counter affidavit is that the petitioners never approached the Board to cancel the joint minimum guarantee agreement on the ground of non-renewal of the licence by the local authority to operate the brick manufacturing

units run by them. Alongwith the counter affidavit, a photocopy of the minimum guarantee agreement executed by the petitioners is produced as Ext.R1(a).

7. I have heard the arguments of the learned counsel for the petitioners and also the learned Standing Counsel appearing for the respondents.

8. The fact that on the basis of an application made by the petitioners and executing a minimum guarantee agreement, the respondents have enhanced the capacity of 100 KVA transformer at North Kalampoor to 160 KVA is not in dispute. The specific case of the respondents in their counter affidavit is that such enhancement of power necessitated only for the industrial units of the petitioners. Going by the terms of Ext.R1(a) minimum guarantee agreement executed by the petitioners, they are bound to pay the unconnected minimum charges in case they are not availing any power supply during the period of 7 years covered by the minimum guarantee agreement. The pleadings and the documents on record clearly indicate that the petitioners have not availed power supply provided by the respondents, which attracts collection of unconnected minimum charges in terms of Ext.R1(a) minimum guarantee agreement. The fact that

the petitioners were forced to close down their industrial unit as the local authority refused to grant renewal of licence is not a valid ground to absolve the petitioners from the contractual liability under the Ext.R1(a) minimum guarantee agreement to pay unconnected minimum charges. In such circumstances, the demand made by the respondents in Exts.P1 and P2 is legally sustainable and no interference of this Court under Article 226 of the constitution of India is warranted.

9. The learned counsel for the petitioners then submits that only for reasons beyond their control, the petitioners could not avail power supply provided on the strength of the minimum guarantee agreement, as the licence granted by the local authority for running their small scale industrial units was not renewed. The learned counsel for the petitioners would submit that if this Court holds that petitioners are liable to pay the amount demanded in Exts.P1 and P2, the petitioners may be permitted to pay the amount in monthly instalments.

10. Having regard to the fact that the petitioners' industrial units were closed down due to non-renewal of licence by the local authority, I deem it appropriate to permit the petitioners to pay the liability under Exts.P1 and P2 in twelve

equal monthly instalments commencing from 01.07.2015. If the petitioners are paying the arrears in monthly instalments as aforesaid without any default, no recovery proceedings pursuant to Exts.P1 and P2 shall be taken against them. But in case of default, it would be open to the respondents to take appropriate coercive steps against the petitioners for recovering the entire balance amount due in terms of Exts.P1 and P2.

The Writ Petition is disposed of as above.

SD/-
ANIL K. NARENDRAN,
JUDGE

JV