

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

WP(C).No. 10747 of 2014 (P)

PETITIONER(S):

**M/S.DISHNET WIRLESS LTD.,
(AIRCEL) R R ARCADE, CC9419/33/2365/B,
NH BYE PASS ROAD, THAMMANAM P.O., VYTTILA,
COCHIN-682032 REPRESENTED BY
AUTHORISED SIGNATORY SATHEESH T.K.**

**BY ADVS.SRI.JACOB CHACKO
SRI.MATHEWS JOSEPH**

RESPONDENT(S):

- 1. PERMANENT LOKADALATH,
HIGH COURT COMPLEX, ERNAKULAM, KOCHI-31.**
- 2. GURUDATT RAO,
RAMANATHA ROAD, PROPRIETOR, KAMMATH & CO.
39/352A, MONASTRY ROAD, KARAKKAMURI
KOCHI-682011 (FORMERLY KNOWN AS SOLID ENERGY SOLUTIONS).**
- 3. JAGATHEESH PAI,
S/O.JANARDHANA PAI, PROPRIETOR, BALAJI ASSOCIATES,
ST.MARY'S CHURCH BUILDING, KOTTAPPURAM, ALANGAD,
ERNAKULAM DISTRICT.**
- 4. SAJITH R.NAIR
S/O.RADHAKRISHNAN NAIR, PROPRIETOR, S S COMMUNICATION,
10/351 VADAKKEMALIL BLDG., NEW ROAD JN.
KUTTIKATTUKARA, ELOOR, ERNAKULAM DT.**
- 5. DAISY TONY,
W/O.TONY, PROPRIETOR, ROYAL TOUCH,
ROOM NO.19/596, OLD MARKET, NEAR ST.DOMINIC CHURCH
ALUVA.**

PJ

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6. SUNNY P.GEORGE,
S/O.GEORGE, SILVER LINE COMMUNICATIONS, 1ST FLOOR,
SELVIN BLDGS., PKS ROAD, MARADU,
ERNAKULAM DISTRICT.
7. MIDHUN MOHAN,
S/O.M.K.MOHAN, PROPRIETOR, DREAMS COMMUNICATIONS,
ASARIPARAMBIL BLDGS., KUREEKKAD, THIRUVANKULAM,
ERNAKULAM DT.
8. T.G.CHANDRASENAN,
S/O.M.GOPINATHAN, MCA COMMUNICATIONS, VILAYIL BLDG.,
PUNNAMOODU, MAVELIKKARA, PATHANAMTHITTA DISTRICT.

R2-R4 & 6-R8 BY ADVS. SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA
SMT.D.S.THUSHARA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

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APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1 : TRUE COPY OF THE AGREEMENT ENTERED INTO BY THE PETITIONER
COMPANY WITH R2.**

**EXHIBIT P2 : TRUE COPY OF THE OP 48/2013 FILED BEFORE PERMANENT LOK
ADALATH.**

**EXHIBIT P3 : TRUE COPY OF THE WRITTEN STATEMENT FILED BY PETITIONER IN
OP 48/2013.**

**EXHIBIT P4 : TRUE COPY OF THE ORDER IN OP 48/2013 OF PERMANENT
LOKADALATH.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.MUHAMED MUSTAQUE, J.

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W.P.(C).No. 10747 of 2014

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Dated this the 12th day of November, 2015

J U D G M E N T

The petitioner has approached this Court aggrieved by an order passed by the Permanent Lok Adalath. The party respondent approached the Permanent Lok Adalath under the Legal Services Authorities Act. The petitioner raised their objection regarding the maintainability. The permanent Lok Adalath found that the complaint is maintainable.

2. The petitioner's case is that the petitioner and the party respondent entered into a contract and the party respondent was appointed as the distributor. Therefore issue is one of a commercial transaction between two persons under a contract. It has nothing to do with the public utility service as envisage under the Legal Services Authorities Act. The petitioner refers to the definition of 'public utility' under the Legal Services Authorities Act. In Chapter VI A, Section 22A (b) (i) to (vi) public

utility services defined as follows:

- “22A. (b) “public utility service” means any–
- (i) transport service for the carriage of passengers or goods by air, road or water; or
 - (ii) postal, telegraph or telephone service; or”
 - (iii) supply of power, light or water to the public by any establishment; or
 - (iv) system of public conservancy or sanitation;
 - (v) service in hospital or dispensary; or
 - (vi) insurance service,”

3. Therefore, according to the petitioner the relationship between the petitioner and the respondent covered by a commercial agreement for distribution ship would not come within the ambit of 'public utility service'.

4. On the other hand the learned counsel for the party respondent would submit that apart from the dealership agreement the petitioner has to provide certain other services. The above services would come within the ambit of public utility. The learned counsel further refers Section 22 C (1) of the Legal Services Authority Act which states that any party to a dispute may, before the dispute is brought before any court, make an application to the Permanent Lok Adalath for settlement of dispute.

5. In law the maintainability of a complaint has to be decided

either with reference to the power given to that authority or with reference to the jurisdictional fact in relation to the complaint. The Permanent Lok Adalath by the impugned order has referred to power with reference to the dispute for entertaining the complaint. Essentially the question now posed by the learned counsel for the petitioner is in relation to the jurisdictional fact in the complaint. According to the petitioner there is no 'public utility' involved in this matter. The Adalath have discussed the issue with reference to the pleadings in para 10. The question whether there exists public utility or not can be examined according to me only after final hearing of the matter giving both parties to an opportunity to adduce evidence and raise further pleadings in the matter. This is a disputed question of fact that whether there exists public utility or not. The permanent Adalath has examined the matter in the impugned order based on the law involved not with respect to the actual fact involved in the matter. Therefore this court is of the view, that can be decided only after final hearing especially the matter requires an examination of

evidence and pleadings. Therefore with a liberty to raise the question of maintainability based on the 'public utility' at the time of final hearing, the writ petition is disposed of. It is made clear that the permanent Lok Adalath is not bound by its own decision which has been taken now. It can vary its decision based on the pleadings and evidence of the parties during the final hearing.

sd/-

sab

A.MUHAMED MUSTAQUE, JUDGE