IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WP(C).No. 17800 of 2009 (T)

PETITIONER:

THE KERALA STATE ELECTRONICS DEVELOPMENT
CORPORATION LTD., KELTRON COMMUNICATIONS COMPLEX
MANVILA, KULATHOOR P.O., THIRUVANANTHAPURAM
REPRESENTED BY MG. DIRECTOR.

BY ADV. SRI.M.C.JOHN

RESPONDENTS:
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1. KERALA LOK AYUKTA,
THIRUVANANTHAPURAM.

2. M.K.MANMADHAN,
MANAGING DIRECTOR, CADMARC SOFTWARE (P) LTD.
KESAVA TOWERS, PULIMOODU, THIRUVANANTHAPURAM.

R2 BY ADVS. SRI.T.P.DEYANANTHAN
SRI.A.V.RAMAKRISHNA PANICKER
SMT.R.SEEMA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

W.P (C) No.17800/2009

APPENDIX

PETITIONER'S EXHIBITS

EXT- P1- TRUE COPY OF THE LETTER DATED 23-03-2006.

EXT- P2- TRUE COPY OF THE REPLY DATED 23-02-2006.

EXT- P3- TRUE COPY OF THE LETTER DATED 27-02-2006.

EXT- P4- TRUE COPY OF THE PURCHASE ORDER DATED 25-03-2006.

EXT- P5- TRUE COPY OF THE QUOTATION DATED 02-03-2006.

EXT- P6- TRUE COPY OF THE LETTER DATED 31-03-2006.

EXT- P7- TRUE COPY OF THE TAX INVOICE DATED 25-03-2006.

EXT- P8- TRUE COPY OF THE DELIVERY CHALAN DATED 29-04-2006.

EXT- P9- TRUE COPY OF THE LETTER DATED 11-04-2007.

EXT- P10- TRUE COPY OF THE LETTER DATED 04-06-2007.

EXT- P11- TRUE COPY OF THE COMPLAINT DATED 05-07-2008.

EXT- P12- TRUE COPY OF THE WRITTEN STATEMENT DATED 18-02-2009.

EXT- P13- TRUE COPY OF THE REPLICATION DATED 06-03-2009.

EXT- P14- TRUE COPY OF THE ORDER DATED 28-04-2009.

RESPONDENTS' EXHIBITS

EXT- R2 (a)- TRUE COPY OF THE REPLICATION DATED 29-04-2006 FILED BY THE PETITIONER BEFORE THE HON'BLE LOK AYUKTA.

NIL

True copy

P.A. To Judge

AMG

C.K. ABDUL REHIM, J.

W.P.(c) No. 17800 OF 2009-T

DATED THIS THE 5th DAY OF JANUARY, 2015.

J U D G M E N T

The Kerala State Electronics Development Corporation Ltd. (KELTRON) is challenging Ext.P14 order passed by the 1st respondent in this writ petition. The dispute pertains to payment of amounts covered under Ext.P7 invoice issued by the 2nd respondent with respect to supply of a software developed for the petitioner corporation. The 2nd respondent approached the Lok Ayukta in Ext.P11 complaint stating briefly that the software in question was supplied based on a purchase order placed by the corporation dated 25-03-2006, on the basis of Ext.P7 Tax Invoice and Ext.P8 Delivery Challan. But the petitioner corporation failed to effect payment of value of the software. It is complained that, despite several requests made, the payment was not effected since for about 2 years. It was alleged that there occurred gross delay on the part of the petitioner corporation in meeting the contractual obligation and to pay cost of the software supplied on 29-04-2006, which had caused undue hardship and harassment to the petitioner. Therefore the 2nd respondent requested the 1st respondent to issue recommendations to remedy the grievance by effecting payment of value of the software, settled on the basis of the purchase order dated 25-03-2006.

2. Before the Lok Ayukta the petitioner corporation filed a written statement contending that the 2nd respondent had supplied the item belatedly, in violation of the terms and conditions of the contract and therefore the 2nd respondent was informed to take back the item supplied. Hence it is contended that there was no delay or latches on the part of the petitioner. In the impugned order, the Lok Ayukta had noted the contention raised by the petitioner corporation that the supply was not made in time and there is violation of the terms and conditions of the purchase order. Further contention of the petitioner corporation that the forum cannot investigate the allegations raised in the complaint, because the allegation was made in respect of an administrative action taken with respect to a matter arising out of the terms and conditions with the supplier, was also

taken note of by the Lok Ayukta. The specific contention was raised before the Lok Ayukta to the effect that the investigation is barred as per Section 8 of the Kerala Lok Ayukta Act, 1999, was considered.

3. Under Section 8 of the Act it is provided that the Lok Ayukta shall not conduct any investigation with respect to a complaint involved in a grievance in respect of any action relating to any matter specified in the second schedule. Item (c) in the second schedule deals with administrative action taken in matters which arises out of the terms of a contract governing purely commercial relations of the administration with customers or suppliers. It cannot be disputed that the grievance with respect to which the complaint was filed before the Lok Ayukta relates to an administrative action of the petitioner corporation with the 2nd respondent who is the supplier of the software, based on the terms and conditions of a contract. But the Lok Ayukta had taken a stand that under item (c) of second schedule there is an exemption with respect to any complaint alleging harassment or gross delay in meeting

contractual obligation. Of course, the averments in the complaint filed before the Lok Ayukta constitute an allegation regarding gross delay in meeting the contractual obligations and thereby causing harassment. But the petitioner corporation had raised a specific contention that it is not a case of delay in meeting the contractual obligation. On the other hand, it is contended that the corporation had denied or refuted the liability based on the fact that the 2nd respondent had allegedly violated the terms and conditions of the contract. Specific contention taken by the petitioner corporation before the Lok Ayukta is to the effect that the 2nd respondent had supplied the items belatedly in violation of the terms and conditions, and hence the 2nd respondent was informed to take back the items supplied.

4. The only question to be decided is as to whether the Lok Ayukta can proceed with an investigation merely on the basis that the complaint involves an allegation of harassment or that of grave delay in meeting the contractual obligations, as exempted under item (c) of

second schedule, even when a person against whom such allegation is made had denied the liability as such and contended that it is not a question of gross delay, but it is a question of refusal/denial of the liability itself.

5. This court is of the considered opinion that when such a dispute is raised the complaint in question will fall outside the purview of exemption provided under item (c) of second schedule. This is because, then the issue assumes the nature of a dispute which need adjudication based on the factual matrix. On the one side, a party of the contract is claiming payment based on a supply effected, alleging gross delay. On the other hand, the other party is refuting liability contending that there is violation of the terms and conditions of the contract. Such an issue needs adjudication based on evidence and materials. The legislative intention in incorporating such disputes within the purview of item (c) of second schedule, taking its scope of adjudication away from the investigative powers of the Lok Ayukta, itself is evident and clear. Hence the Lok Ayukta could not have investigated into the matter in view of Section 8 (1) of the

Act read with item (c) of second schedule appended to the Act.

6. Under the above mentioned circumstances it is to be held that the impugned order (Ext.P14) passed by the 1st respondent is lacking jurisdiction and is liable to be set aside.

7 Hence this writ petition is allowed and Ext.P14 is hereby quashed.

8. It is made clear that this court has not entered on any findings regarding merits of the rival contentions with respect to the issue involved in the complaint which was decided by the Lok Ayukta. The 2nd respondent will be at liberty to pursue his grievance in appropriate proceedings before appropriate forum, to the extent permissible under law.

Sd/-
C.K. ABDUL REHIM
JUDGE

AMG

True copy

P.A. to Judge