

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

WP(C).No. 20459 of 2009 (B)

PETITIONER(S):

**A.L. CHACKO, S/O.LOOKKA,
AGED 58 YEARS, ADOPALLIYIL VEEDU, P.O. PADIMARUTHU,
KASARGOD DISTRICT.**

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENT(S):

- 1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VYDHYUTHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM.**
- 2. THE ASSISTANT ENGINEER,
ELECTRICAL SECTION, KERALA STATE, ELECTRICITY BOARD,
RAJAPURAM, KASARGOD DISTRICT.**
- 3. THE SUB ENGINEER, ELECTRICAL SECTION,
KERALA STATE ELECTRICITY BOARD, RAJAPURAM,
KASARGOD DISTRICT.**

BY ADVS. SMT.P.K.RADHIKA, SC

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
03-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 20459 of 2009 (B)

APPENDIX

PETITIONER(S)' EXHIBITS:

**EXT.P1: TRUE COPY OF THE ABOVE DEMAND LETTER ISSUED BY THE
3RD RESPONDENT.**

**EXT.P2: TRUE COPY OF DEMAND LETTER NO.BB12/RR/RPM/09-10/304 DTD.17.6.2009
ISSUED BY 3RD RESPONDENT.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE.

MsV/

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.20459 of 2009

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Dated this the 3rd day of September, 2015

JUDGMENT

Under challenge in this writ petition are Exts.P1 and P2 demand notices by which the respondent board has directed the petitioner to remit an amount of ₹69,144/- towards current charges for 10 years @ ₹359/- per month together with interest.

2. Petitioner is a small farmer and for agricultural purposes of his land having an extent of 1.25 acres, he along with ten others had executed a minimum guarantee in the year 1989 with the respondents for drawing a three phase electrical line from Chakkithadukkam to Narayar in Hosdurg taluk, Kasaragod district. The petitioner alleges that after about nine years, the respondents have drawn the electricity line totally in violation and against the terms of the minimum guarantee agreement in as much as, instead of drawing a three phase line through the alignment fixed, it was drawn through a different

alignment and instead of three phase, single phase line was drawn through the property of the petitioner. Therefore, the petitioner was not in a position to take electricity connection for his pump house for running the motor for irrigation of his land. The above violation and the inability of the petitioner to take connection was brought to the notice of respondents 2 and 3 several times and in fact on several occasions, when the above authorities had inspected the locality, they were fully aware of the fact.

3. The petitioner alleges that since the minimum guarantee was executed for agricultural purpose and since the very purpose is defeated on account of the wrongful action of the respondents, no financial liability can be fastened on him for drawing the above line or for non consumption of electric energy. However, as per Exts.P1 and P2, the respondents have demanded an amount of ₹69,144/- which includes charges for monthly electricity consumption for three year @ ₹359/- and interest. The petitioner further alleges that the

respondents have failed to perform their part of contract in the matter and, therefore, they cannot now enforce the terms of the minimum guarantee against the petitioner. In fact, the very purpose of the agreement itself stands defeated for non-performance and violation of the part of the contract by the respondents. It is with this background, the writ petition is filed.

4. In the counter affidavit filed by the respondents, it was contended as follows:

It was contended that the Minimum Guarantee No.9/88-89/1.12.1989 was executed with one Seshan Nair and 15 others, including the petitioner, on 1.12.1989 for drawing three phase line for agricultural purpose. The work has been completed in December 1998 and line was charged on 5.12.1998. Three phase line was drawn for 2.4 KM through the properties of 14 guarantors and single phase line was drawn only upto 200 metres through the properties of the balance two guarantors, including the petitioner. At present, it is

not possible to find any deviation from the original route.

It was further contended that as per the terms and conditions of minimum guarantee agreement dated 1.12.1989, the guarantor had to take electric connection after the line is charged by the licensee. Otherwise the guarantor would have to pay the cost of the line constructed @ ₹ 359/- per month. It was contended that in the present case, the petitioner had not taken connection as per the terms and conditions of the minimum guarantee agreement. Therefore, Ext.P2 demand notice was issued by the second respondent for an amount ₹69,144/- for remittance in which ₹43,080/- being the UCM amount and ₹26,064/- as interest. Due to the non-payment of the above demand, Ext.P2 notice dated 17.6.2009 was issued from the second respondent's office for starting the revenue recovery action.

It was further contended that 1.5 HP motor can work at single phase connections also. Even though the minimum guarantee

was executed for drawing three phase line, 14 guarantors installed motors with single phase connection. It was also contended that one of the guarantors had taken connection though only single phase line was drawn through his property and the motor worked properly. Therefore, the petitioner could have taken connection with 1.5 HP motor which can work with single phase connection satisfactorily for irrigating his land for the time being. Hence, the petitioner is liable to remit the UCM amount of ₹43,080/- with interest.

9. Arguments have been heard.

10. Admittedly, the petitioner along with 15 others had executed a minimum guarantee agreement on 1.12.1989 for drawing a three phase line for agricultural purposes and further works pursuant to the same was completed in 1998. This is admitted by the respondents in their counter. However, three phase line was only drawn upto a distance of 200 metres away from the property of the petitioner. According to the petitioner, the respondent board is bound to draw

three phase line and give connections to all minimum guarantors in compliance of the minimum guarantee agreement or the relevant provisions of law.

11. The contention now taken by the respondent is that yet another consumer, who had executed a minimum guarantee agreement, has been provided single phase connection and he had availed the single phase connection and he could operate the 1.5 HP motor. However, the petitioner was not ready to avail the facility as he was provided with three phase line as agreed to in the minimum guarantee agreement.

12. The petitioner has not demanded the respondents to deviate from the original route. However, his only request was to provide three phase line in accordance with the minimum guarantee agreement. The respondent would contend that as per the terms and conditions of the minimum guarantee agreement, the petitioner is bound to take connection after the line was charged. This is legally

not correct because, only after the service connection is drawn in accordance with the agreement, the petitioner is bound to avail the facility. The respondent board cannot contend that the electric line was drawn in accordance with the minimum guarantee agreement because they themselves have admitted in paragraph 2 of their counter affidavit that instead of drawing 3 phase, only single phase line upto the distance of 200 metres was drawn in the property of the petitioner.

13. The fact that the other guarantors have installed motors with single phase connection is not at all relevant as far as the petitioner is concerned because, once the minimum guarantee agreement is executed for drawing three phase line, the line must be drawn accordingly by giving the facility of three phase voltage of 415 watts. The specific case of the petitioner is that the property is lying geographically at a much higher level and, therefore, even if he avails single phase connection, no purpose would be served since he

cannot install a single phase motor to irrigate his cultivable land. Once the minimum guarantee is executed with respondent board, the respondent in obedience to that agreement must act in the matter by drawing three phase line. They cannot turn round and say that though the agreement is to draw three phase line, they have drawn single phase line and force the petitioner to avail the single phase connection.

14. The learned counsel for the petitioner invited my attention to Regulation 19(5) of the Kerala State Electricity Board Terms and Conditions of Supply, 2005 which states that when there are changes in the contract demand/ connected load, tariff or provisions in the Kerala State Electricity Board Terms and Conditions of Supply, 2005 the board may require in writing the consumer to execute a fresh agreement in the form applicable within thirty days and the consumer shall comply with the same.

15. In the light of the above, on a specific query put by me to

the learned standing counsel for the respondent as to whether any subsequent agreement has been executed, no positive answer is forthcoming on the aforesaid question. The petitioner is having the support of the decision of the Apex Court in **Indian Aluminum Company v. Kerala State Electricity Board** [AIR 1975 Supreme Court 1967) which specifically states that the respondent board has no authority to override a contractual stipulation.

16. Moreover, as per Regulation 18 of the Kerala Electricity Supply Code, 2005, the licensee is entitled to recover from the consumer on the basis of the bill, the charges for electricity supplied based on the approved tariff in force. Here, admittedly, the petitioner has not availed the service of the respondent board and, therefore, Exts.P1 and P2 demands are incompetent in the eye of law.

In the result, the writ petition is allowed. Exts.P1 and P2 are quashed. It is declared that since the minimum guarantee agreement executed by the petitioner and other beneficiaries was for

drawing a three phase line for agricultural purpose and since the line was not drawn in accordance with the terms of the minimum guarantee, the respondents cannot now enforce the terms of the minimum guarantee thereby demand amounts towards unused electricity and interest thereon from the petitioner.

sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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