

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

WP(C).No. 30404 of 2009 (U)

PETITIONER(S):

**ANEES, S/O.MOHAMMED HAJI,
AGED 26 YEARS, MANAGING PARTNER, M/S.SHARJAH TOWERS,
EAST NADA, GURUVAYUR.**

**BY ADVS.SRI.R.S.KALKURA
SRI.M.S.KALESH
SMT.A.V.PRIAYA
SRI.HARISH GOPINATH
SRI.V.VINAYMENON
SMT.K.V.P.JAYALEKSHMY
SRI.M.AJAY (IRUMPANAM)**

RESPONDENT(S):

- 1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM.**
- 2. THE ASSISTANT ENGINEER,
ELECTRICAL SECTION, GURUVAYOOR.**
- 3. THE ASSISTANT EXECUTIVE ENGINEER,
ELECTRICAL SUB DIVISION, KERALA STATE ELECTRICITY
BOARD, GURUVAYOOR.**
- 4. THE DEPUTY CHIEF ENGINEER,
ELECTRICAL CIRCLE, TRICHUR.**
- 5. THE SPECIAL OFFICER, REVENUE,
KERALA STATE ELECTRICITY BOARD, THIRUVANANTHAPURAM.**
- 6. THE SPECIAL OFFICER (REVENUE),
KERALA STATE ELECTRICITY BOARD, OFFICE OF THE
SPECIAL OFFICER (REVENUE), VYDYUTHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM.**

**R1 TO 6 BY ADV.SRI.P.P.THAJUDEEN, SC, K.S.E.B
R1-6 BY ADV. SMT.P.K.RADHIKA-KSEB**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-12-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE PARTNERSHIP DEED DATED 14.7.2001.
EXHIBIT P2: TRUE COPY OF THE LETTER DATED 4.1.2002 ISSUED BY THE IST RESPONDENT TO THE PETITIONER.
EXHIBIT P3: TRUE COPY OF THE DRAFT NO.833904 DATED 9.1.2002 DRAWN ON BANK OF BARODA, GURUVAYOOR IN FAVOUR OF THE IST RESPONDENT.
EXHIBIT P4: TRUE COPY OF THE ORDER OF APPLICATION OF POWER DT.28.1.2002.
EXHIBIT P5: TRUE COPY OF THE LETTER NO.ST/KSEB/HT/7/2002 DATED 18.7.2002.
EXHIBIT P6: TRUE COPY OF THE LETTER NO.DB1-17/2001-02/1457 DATED 31.7.2002.
EXHIBIT P7: TRUE COPY OF LETTER NO.AE1/HT/SHARJA TOWERS/02-03 DT.31.1.2003.
EXHIBIT P8: TRUE COPY OF THE AGREEMENT DATED 8.5.2003 BETWEEN THE PETITIONER AND THE IST RESPONDENT.
EXHIBIT P9: TRUE COPY OF THE LETTER NO.AE1/HT/SHARJA TOWERS/03-04 DATED 28.4.2003 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.
EXHIBIT P10: TRUE COPY OF THE ORDER N.AE1/HT/PT-2/03.04 DATED 13.5.2003.
EXHIBIT P11: TRUE COPY OF THE LETTER NO.AE1/HT/SHARJA TOWERS/03-04/436 DATED NIL ISSUED BY THE RESPONDENTS CONFIRMING THE RECEIPT OF THE AMOUNT.
EXHIBIT P12: TRUE COPY OF THE LETTER NO.AE1/HT/SHARJA TOWERS/03-04/436 DATED 21.6.2003 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.
EXHIBIT P13: TRUE COPY OF THE LETTER DATED 4.7.2003 ISSUED BY THE PETITIONER TO THE 4TH RESPONDENT.
EXHIBIT P14: TRUE COPY OF THE LETTER DATED 1.1.2003 ALONG WITH RECEIPT INDICATING RECEIPT OF THE SERVICE CONNECTION CHARGES.
EXHIBIT P15: TRUE COPY OF THE LETTER NO.AE1/HT/SHARJA TOWERS/03.4/2636 DATED 21.11.2003 ISSUED BY THE IST RESPONDENT TO THE PETITIONER.
EXHIBIT P16: TRUE COPY OF THE LETTER DATED 26.11.2003 ISSUED BY THE PETITIONER TO THE RESPONDENT.
EXHIBIT P17: TRUE COPY OF THE LETTER DATED 12.12.2003 ISSUED BY THE IST RESPONDENT TO THE PETITIONER.
EXHIBIT P18: TRUE COPY OF THE LETTER DATED 19.12.2003 ISSUED BY THE PETITIONER TO THE 4TH RESPONDENT.
EXHIBIT P19: TRUE COPY OF THE COMPLAINT NO.OP NO.99/2004 BEFORE THE CDRC, THRISSUR.
EXHIBIT P20: TRUE COPY OF THE ORDER DATED 23.3.2004 IN IA NO.67/04 IN OP NO.99/2004 OF THE CDRC, THRISSUR.
EXHIBIT P21: TRUE COPY OF THE NOTICE DATED 7.1.2004 ISSUED BY THE 6TH RESPONDENT TO THE PETITIONER.
EXHIBIT P22: TRUE COPY OF THE JUDGMENT DATED 23.6.2009 IN WPC NO.254393/2004.
EXHIBIT P23: TRUE COPY OF THE LETTER NO.HTB-25/2539/819 DATED 14.10.2009 ISSUED BY THE 6TH RESPONDENT TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS: NIL

OKB

True copy
P.A. to Judge

K.HARILAL, J.

W.P.(C) No.30404 of 2009

Dated this the 14th day of December, 2015.

JUDGMENT

The petitioner was the Managing Partner of M/s.Sharjah Towers, a firm which stands, at present, dissolved and closed. According to the petitioner, now he is the absolute owner in possession of the said 'Sharjah Towers'. The matter, in issue, involved in this writ petition relates to the electric power allocation to the said commercial complex by the 1st respondent. The petitioner had applied for a High Tension connection to the above said commercial complex. According to the petitioner, after remitting all the requisite amounts demanded by the 1st respondent, for power allocation, the petitioner received a communication dated 21.11.2003, to pay an amount of Rs.6,46,800/-, prescribed as minimum charges, and an amount of Rs.19,719/- towards penalty for the same. The aforesaid demand was challenged by

the petitioner in W.P(C).No.24393/04, which culminated in Ext.P22 judgment. W.P(C).No.24393/04 was filed challenging Exts.P15, P17 and P21 bills. This Court, vide Ext.P22 judgment, quashed the said bills and directed the 5th respondent to issue fresh bills and to give credit to the amount already paid by him. Pursuant to that judgment, the 6th respondent vide Ext.P23 order dated 14.10.2009 directed the petitioner to pay an amount of Rs.6,28,145/- on or before 29.10.2009, failing which, the petitioner was informed that the service connection would be disconnected, without further notice. Hence, Ext.P23 is challenged in this writ petition, as highly arbitrary and illegal and this writ petition is filed with the following prayers:

- i. Issue a writ of certiorari or any other appropriate writ, direction or order quashing Ext.P23.
 - ii. Issue a writ of mandamus or any other appropriate writ, direction, or order commanding the respondents only to claim the minimum deposit charges from 8.5.2003 to 10/2003 for which period alone the petitioner is liable to pay.
 - iii. Issue such other orders as are deemed fit and proper by this Court.
2. Heard the learned counsel for the petitioner

and the learned Standing Counsel for the respondents.

3. According to the petitioner, in Ext.P22 judgment, after quashing Exts.P15, P17 and P21 bills, this Court held that the minimum guaranteed charges due to the respondents would be governed by Clause 9(a)(i) and Clause 25 of Ext.P8 agreement. As per Clause 25, charges payable as minimum will have to be paid even if power is not availed of within 2 months from the date on which the readiness of the Board to supply power to the consumer is intimated. According to the petitioner, by Ext.P12, he was required to remit the service connection charges and avail electricity. But the amount was not quantified. Even though the amount was not quantified, by Ext.P14, the petitioner had remitted Rs.1,40,850/- as informed by the respondents, on enquiry. As per Clause 25, the charges payable as minimum will have to be paid even if power is not availed of within two months from the date on which the readiness of the Board to supply power to the consumer is intimated. Here, he was intimated to pay the minimum guaranteed charges on 21.6.2003 and

he paid the amount on 1.10.2003 and thereby expressed his readiness to avail power. Therefore, he is liable to pay the minimum charges from 21.8.2003 to 1.10.2003 and it was incumbent upon the respondents to give electric connection immediately on receipt of the said amount of Rs.1,40,850/- on 1.10.2003. But the respondents have not provided service connection, even after the payment of such charges. Therefore, he is not liable to pay any amount as minimum guaranteed charges under Clause 25 of Ext.P8 after 1.10.2003. After 1.10.2003, there was no demand from the part of the respondents to pay any amount for service connection until Ext.Pl5 and by Ext.Pl5 the petitioner was directed to pay an amount of Rs.6,46,800/- with Rs.19,719/- as penalty and this Court quashed the said demand. So, the respondents could have provided service connection to the petitioner on receipt of the amount under Ext.Pl4. In spite of providing the service connection on receipt of the amount under Ext.Pl4, they withheld the power supply without any sufficient reason. Therefore, he is not liable to pay any amount after Ext.Pl4,

particularly, in view of the fact that Ext.P15 demand was quashed by this Court. There is no basis for claiming minimum guaranteed charges upto 24.8.2004 the date of passing of the interim order by this Court directing the petitioner to pay an amount of Rs.2 lakhs. This Court in Ext.P22 judgment directed the respondents to work out the amount on the basis of the observations made in the said judgment. In view of the observations made in Ext.P22 judgment, no claim can be raised against the petitioner as minimum guaranteed charges after 1.10.2003. But, now the respondents have claimed minimum guaranteed charges for the period from August 2003 to August 2004 as service charges and demanded an amount of Rs.6,28,145/-.

4. Per contra, the respondents filed a counter statement and the relevant portion as regards the basis of the claim, reads as follows:-

“3. As directed by this Hon'ble Court vide judgment in W.P(C) No.24393/2004 fresh demand was issued after considering the findings of this Hon'ble Court. Hence a notice was issued by revising the bill from 5/2003 to 8/2004 from the date of minimum guarantee agreement (8/5/2003). As per the judgment, the charges only from the date of minimum guarantee agreement was included

in the invoice. Thus, a revised bill for Rs.6,28,145/- (Rupees Six lakhs twenty eight thousand one hundred forty five only) after deducting Rs.2,00,000/- already paid by the consumer with last date of remittance as 29/10/2009 was issued from this office on 14/10/2009.”

5. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondents.

6. The sum and substance of the arguments advanced by the learned counsel for the petitioner is that as per clause 25 of Ext.P8 agreement, if power is not availed of within two months from the date on which the readiness of the Board is intimated, the consumer is liable to pay minimum charges. But, in the instant case, by Ext.P14, he has paid the amount demanded by Ext.P12. Therefore, immediately on receipt of the amount, the respondents should have provided service connection to the petitioner. So also, in view of Ext.P22 judgment quashing Ext.P15 demand, no amount can be claimed as minimum guaranteed charges after 1.10.2003.

7. Per contra, the contention raised by the respondents is that the petitioner is liable to pay the

minimum guaranteed charges till the date of interim order passed by this Court directing the petitioner to pay Rs.2 lakhs towards the demand made by Ext.P15.

8. The short question that arises for consideration is, whether the petitioner is liable to pay any amount towards minimum guaranteed charges, after the remittance of amount claimed under Ext.P12 was paid by Ext.P14.

9. Going by Ext.P22 judgment, this Court held as follows:

“Therefore it is unequivocally clear that the minimum guaranteed amount can be claimed only on the basis of clause 25 of Ext.P8 agreement and in view of the contents of Ext.P12 letter. The respondents are clearly estopped from claiming any amount for the period prior to Ext.P8. The liability of the petitioner for payment of the unconnected minimum guaranteed charges, need be re-worked based on clause 25 of Ext.P8 agreement dt.8.5.2003 based on the contents of Ext.P12 letter of the 4th respondent dt. 21.6.2003.

10. Going by the above observations made by this Court, prima facie, I find that the date of interim order passed by this Court has no relevancy at all. Therefore, the demand made upto August 2004 has no legs to stand. In view of the observations made above

by this Court, in Ext.P22 judgment, as regards the very same matter in issue, Clauses 9(a)(i) and 25 of Ext.P8 agreement assume significance and relevancy. So, it is apposite and profitable to extract the same, which reads as follows:

“9(a)(i). This agreement shall be deemed to have come into force with effect from 8.5.2003 and the prior agreement if any is hereby repealed and abrogated by this agreement.”

Clause 25 of Ext.P8 reads as follows:

“Charges payable as minimum will have to be paid even if power is not availed of within 2 months from the date on which the readiness of the Board to supply power to the consumer is intimated.”

11. According to Clause 25 of Ext.P8, the charges payable as minimum will have to be paid even if the power is not availed of within two months from the date of intimation. In the instant case, according to the petitioner, the readiness of the respondents to supply power to the consumer is intimated by Ext.P12 dated 21.6.2003 and it was incumbent upon the petitioner to pay the minimum charges on or before 21.8.2003. Here, the petitioner has remitted the service charges demanded by Ext.P12 on 1.10.2003 and

he is liable to pay the minimum charges for a period from 21.8.2003 to 1.10.2003 only and thereafter, the respondents have not made any demand, except Ext.P15, which stands quashed by this Court, by Ext.P22 judgment. It follows that so long as Ext.P15 stands quashed by Ext.P22 judgment, no claim can be raised against the petitioner, after the remittance of amount under Ext.P14 as required under Ext.P12. In the above view, I find that the amount demanded under Ext.P23 for the period from May 2003 to August 2004, the date of providing connection, is unreasonable and unjust, and liable to be quashed. The respondents are directed to issue a fresh bill claiming the minimum guaranteed amount for a period from 21.8.2003 to 1.10.2003, if they are liable to pay minimum charges under law.

12. Going by Ext.P23, it appears that the amount of Rs.8,28,145/- was calculated for the period from 5/2003 to 8/2004. Obviously, minimum guaranteed charge was calculated from the date of Ext.P8 agreement. It shows that even after Ext.P22 judgment, the respondents miserably failed to understand the scope and extent of

Clause 25. The crucial date from which the liability to pay minimum charge commences to operate, is the date on which the readiness of the Board to supply power to the consumer is intimated only. Therefore, it is incumbent upon the respondents to show the intimation by which the Board intimated its readiness to provide supply. Here, the only available document on record to show the readiness of the Board is Ext.Pl2. It is pertinent to note that even in Ext.Pl2, the Board has not quantified the amount to be remitted by the petitioner for availing power. In that circumstance, this Court is inclined to believe the case of the petitioner that he came to know the exact amount to be paid by him, for availing power, on enquiry made by him only. In short, the date of Ext.Pl2 can be treated as date of intimation expressing the readiness of the Board, as contemplated under Clause 25.

13. Ext.Pl4 further shows that, as required by the Board, the petitioner had remitted Rs.1,40,850/- on 1.10.2003 and the said remittance was made with an intent to obtain power supply as required under Ext.Pl2. So, it could be reasonably presumed that the petitioner began

to avail of power from 1.10.2003 onwards, in the absence of any other materials to show otherwise, from the part of the respondents. If the petitioner had not availed of power on 1.10.2003, it was incumbent upon the Board to establish the actual date from which the petitioner began to avail of power with sufficient materials.

14. Even though, in the counter affidavit, it is stated that amount was calculated for a period from 5/2003 to 8/2004, there is no explanation as to what is the basis of these two dates on which the liability commences and ends. In short, the respondents miserably failed to explain the entitlement of amount quantified under Ext.P23. In this analysis, I find that the claim of Rs.6,28,145/- under Ext.P23 is unfounded and arbitrary. Consequently, Ext.P23 will stand quashed.

This writ petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.