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Anilkumar vs Kerala State Electricity Board Limited

Anilkumar vs Kerala State Electricity Board Limited

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Court : Kerala

Decided On : Sep-30-2021

Judge : Honourable Mr.Justice S.V.Bhatti,Honourable Mr.Justice Viju Abraham

Appeal No. : WP(C)/13661/2016

Appellant : Anilkumar

Respondent : Kerala State Electricity Board Limited

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR.JUSTICE VIJU ABRAHAM THURSDAY, THE 30TH DAY OF SEPTEMBER 2021 / 8TH ASWINA, 1943 WA NO. 1550 OF 2015 AGAINST THE ORDER DATED 24.06.2015 IN WP(C) NO.18967/2015 OF HIGH COURT OF KERALA, ERNAKULAM APPELLANTS/PETITIONERS:

1 PRADEEP.C.P.,AGED 35 YEARS,S/O.PURUSHOTHAMAN, METRO CABLE TV NETWORK,POOPATHY, THRISSUR DISTRICT. 2 RAJEEV.C.T.,AGED 40 YEARS,S/O.THANKAPPAN, DRISYA CABLE TV NETWORK,POOPATHY, THRISSUR DISTRICT. 3

K.N.PARAMESWARAN,S/O.NARAYANAN, ROYAL CABLE TV NETWORK,POYYA, THRISSUR DISTRICT. 4 P.S.SUBITHAN,S/O.SUKUMARAN, CRYSTAL CABLE TV NETWORK,MALA, THRISSUR DISTRICT. 5 ARUNKUMAR.P,S/O.PANKAJAKSHAN, TELESTAR CABLE NETWORK,VALIYAPARAMBU, THRISSUR DISTRICT. 6 K.S.SUMESH,S/O.SUBRAMANIAN, LAKSHMI CABLE VISION,ERAVATHUR, THRISSUR DISTRICT. 7 K.A.THOMAS,S/O.ANTHONY, PRIME CHANNEL NETWORK,KUZHUR, THRISSUR DISTRICT. 8 SURESH KUMAR.P.P.,S/O.PARAMESWARAN, CRYSTAL CABLE TV NETWORK,MALA, THRISSUR DISTRICT. 9 ANTONY.P.,S/O.LONAPPAN, P.K.D.CABLE TV NETWORK,MADATHUMPADI, CHALAKUDY,THRISSUR DISTRICT. 10 JEEJO JOSEPH,S/O.JOSEPH, MELADOOR CABLE VISION,MELADOOR, THRISSUR DISTRICT. BY ADVS. SRI.RENJITH THAMPAN (SR.) SMT.P.R.REENA &

& 13661 of 2016 2 RESPONDENTS/RESPONDENTS: 1 KERALA STATE ELECTRICITY BOARD LIMITED REP. BY ITS SECRETARY,VAIDYUTHI BHAVAN, THIRUVANANTHAPURAM,PIN-695004. 2 THE EXECUTIVE ENGINEER, ELECTRICAL DIVISION OFFICE,K.S.E.B,CHALAKUDY, THRISSUR DISTRICT,PIN-680307. 3 THE EXECUTIVE ENGINEER ELECTRICAL DIVISION OFFICE,K.S.E.B,IRINJALAKUDA, THRISSUR DISTRICT,PIN-680121. 4 CHIEF ENGINEER ELECTRICAL CIRCLE OFFICE, K.S.E.B,ERNAKULAM,PIN-682 031. OTHER PRESENT: ADV B PREMOD FOR SC SUDHEER GANESH KUMAR THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30.09.2021, ALONG WITH WA.NO.30/2016 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: & & 13661 of 2016 3

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR.JUSTICE VIJU ABRAHAM THURSDAY, THE 30TH DAY OF SEPTEMBER 2021 / 8TH ASWINA, 1943 WA NO. 30 OF 2016 AGAINST THE ORDER DATED 26.06.2015 IN WP (C) NO.14990/2015 OF HIGH COURT OF KERALA, ERNAKULAM APPELLANTS/PETITIONERS: 1 SALI P.P.,46 YEARS,S/O.AYYAPPAN PANI, POOJA NETWORK, POOVANTHURUTH P.O., KOTTAYAM DISTRICT. 2 M.K.REJIMON,AGED 46 YEARS,S/O.KESAVAN, MEGHADOOD CABLE VISION, ARPOOKKARA EAST P.O., KOTTAYAM. 3 SURESH PAN VISION, ATHIRAMPUZHA P.O., KOTTAYAM. 4 SHINE.V.KORAH,S/O.KORAH, KAIRALI CABLE TV NETWORK, MOOLEDAM P.O., KOTTAYAM. BY ADVS. SRI.RENJITH THAMPAN (SR.) SMT.SURYA BINOY RESPONDENTS/RESPONDENTS: 1 KERALA STATE ELECTRICITY BOARD LIMITED, REP. BY ITS SECRETARY, VAIDYUTHI BHAVAN, THIRUVANANTHAPURAM, PIN - 695 004. 2 THE EXECUTIVE ENGINEER ELECTRICAL DIVISION OFFICE, K.S.E.B, PALLOM, KOTTAYAM DISTRICT, PIN: 686 007. 3 THE EXECUTIVE ENGINEER ELECTRICAL DIVISION OFFICE, K.S.E.B, VAIKOM, KOTTAYAM DITRICT, PIN: 686 007. &

& 13661 of 2016 4 4 CHIEF ENGINEER ELECTRICAL CIRCLE OFFICE, K.S.E.B, THIRUVANANTHAPURAM, PIN- 695 004. OTHER PRESENT: ADV B PREMOD FOR SC SUDHEER GANESH KUMAR THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 30.09.2021, ALONG WITH WA.NO.1550/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: & & 13661 of 2016 5

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR.JUSTICE VIJU ABRAHAM THURSDAY, THE 30TH DAY OF SEPTEMBER 2021 / 8TH ASWINA, 1943 WP(C) NO. 18967 OF 2015 PETITIONERS:

1 PRADEEP C.P,AGED 35 YEARS S/O. PURUSHOTHAMAN, METRO CABLE TV NETWORK, POOPATHY, THRISSUR DISTRICT. 2 RAJEEV C.T.,AGED 40 YEARS S/O. THANKAPPAN, DRISYA CABLE TV NETWORK, POOPATHY, THRISSUR DISTRICT. 3 K.N.PARAMESWARAN,S/O. NARAYANAN, ROYAL CABLE TV NETWORK, POYYA, THRISSUR DISTRICT. 4 P.S.SUBITHAN,S/O. SUKUMARAN, CRYSTAL CABLE TV NETWORK, MALA, THRISSUR DISTRICT. 5 ARUNKUMAR P.,S/O. PANKAJAKSHAN, TELESTAR CABLE NETWORK, VALIYAPARAMBU, THRISSUR DISTRICT. 6 K.S.SUMESH,S/O. SUBRAMANIAN, LAKSHMI CABLE VISION, ERAVATHUR, THRISSUR DISTRICT. 7 K.A.THOMAS,S/O. ANTHONY, PRIME CHANNEL NETWORK, KUZHUR, THRISSUR DISTRICT. 8 SURESH KUMAR P.P.,S/O. PARAMESWARAN, CRYSTAL CABLE TV NETWORK, MALA, THRISSUR DISTRICT. 9 ANTONY P.,S/O. LONAPPAN, P.K.D CABLE TV NETWORK, MADATHUMPADI, CHALAKUDY, THRISSUR DISTRICT. 10 JEEJO JOSEPH,S/O. JOSEPH, MELADOOR CABLE VISION, MELADOOR, THRISSUR DISTRICT. BY ADVS. SRI.RENJITH THAMPAN (SR.) SMT.P.R.REENA &

& 13661 of 2016 6 RESPONDENTS:

1 KERALA STATE ELECTRICITY BOARD LIMITED, REP. BY ITS SECRETARY, VAIDYUTHI BHAVAN, THIRUVANANTHAPURAM, PIN-695 004. 2 THE EXECUTIVE ENGINEER ELECTRICAL DIVISION OFFICE, K.S.E.B., CHALAKUDY, THRISSUR DISTRICT, PIN-680 307. 3 THE EXECUTIVE ENGINEER ELECTRICAL DIVISION OFFICE, K.S.E.B, IRINJALAKUDA, THRISSUR DISTRICT, PIN-680 121. 4 CHIEF ENGINEER,ELECTRICAL CIRCLE OFFICE, K.S.E.B, ERNAKULAM, PIN-682 031.

OTHER PRESENT: ADV B PREMOD FOR SC SUDHEER GANESH KUMAR THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30.09.2021,

ALONG WITH WA.NO.1550/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: & & 13661 of 2016 7

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR.JUSTICE VIJU ABRAHAM THURSDAY, THE 30TH DAY OF SEPTEMBER 2021 / 8TH ASWINA, 1943 WP(C) NO. 22999 OF 2015 PETITIONER: P.D POULOSE,S/O.DEVASSY, AGED 73 YEARS USHUS CABLE TV NETWORK, PUTHANCHIRA, THRISSUR DISTRICT. BY ADVS. SRI.RENJITH THAMPAN (SR.) SMT.P.R.REENA RESPONDENTS: 1 KERALA STATE ELECTRICITY BOARD LIMITED REP. BY ITS SECRETARY, VAIDYUTHI BHAVAN,THIRUVANANTHAPURAM, PIN-695004. 2 THE EXECUTIVE ENGINEER ELECTRICAL DIVISION OFFICE, K.S.E.B., IRINJALAKUDA,THRISSUR DISTRICT, PIN-680121. 3 CHIEF ENGINEER ELECTRICAL CIRCLE OFFICE, K.S.E.B., ERNAKULAM,PIN 682031. OTHER PRESENT: ADV B PREMOD FOR SC SUDHEER GANESH KUMAR THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30.09.2021, ALONG WITH WA.NO.1550/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: & & 13661 of 2016 8

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR.JUSTICE VIJU ABRAHAM THURSDAY, THE 30TH DAY OF SEPTEMBER 2021 / 8TH ASWINA, 1943 WP(C) NO. 26523 OF 2015 PETITIONERS:

1 CABLE TV OPERATORS ASSOCIATION, G-21, PANAMPILLY NAGAR, KOCHI-36, REPRESENTED BY ITS SECRETARY, K.V.RAJAN, S/O.VASUDEVAN NAMBEESAN,KIZHAKUTTAYIL HOUSE, CHEMMANAMTHITTA, KECHERI,THRISSUR DISTRICT. 2 JUSTIN ANTO K, AGED 40 YEARS,S/O.ANTO.K, INSAT CABLE

NETWORK, THUMBOOR,THRISSUR DISTRICT. BY ADVS. SRI.RENJITH THAMPAN (SR.) SMT.P.R.REENA

RESPONDENTS: 1 KERALA STATE ELECTRICITY BOARD REP. BY ITS SECRETARY, VAIDYUTHI BHAVANAM, THIRUVANANTHAPURAM, PIN - 695004. 2 CHAIRMAN/MANAGING DIRECTOR KERALA STATE ELECTRICITY BOARD LIMITD, VAIDYUTHI BHAVANAM, THIRUVANANTHAPURAM, PIN-695004. OTHER PRESENT: ADV B PREMOD FOR SC SUDHEER GANESH KUMAR THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30.09.2021, ALONG WITH WA.NO.1550/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: & & 13661 of 2016 9 N THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR.JUSTICE VIJU ABRAHAM THURSDAY, THE 30TH DAY OF SEPTEMBER 2021 / 8TH ASWINA, 1943 WP(C) NO. 13661 OF 2016 PETITIONERS: 1 ANILKUMAR,AGED 53 YEARS,S/O.BALAN K NAIR, DRISYA CABLE TV NET WORK, RAMAKRISHNAPADI, LAKKIDI, PALAKKAD DISTRICT. 2 ASHARANI,AGED 46 YEARS, W/O.ANILKUMAR, SATLINKS P.O. ROAD, SHORNUR, PALAKKAD. BY ADVS. SRI.RENJITH THAMPAN (SR.) SMT.P.R.REENA RESPONDENTS:

1 KERALA STATE ELECTRICITY BOARD LIMITED REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER, VAIUDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM, PIN-695 004. 2 THE EXECUTIVE ENGINEER ELECTRICAL DIVISION OFFICE, KSEB, SHORNUR, PALAKKAD DIST. 679 121. 3 THE EXECUTIVE ENGINEER ELECTRICAL DIVISION OFFIE, KSEB, ALATHUR, PALAKKAD DIST. 678 541. &

& 13661 of 2016 10 4 THE EXECUTIVE ENGINEER ELECTRICAL DIVISION OFFICE, KSEB, PALAKKAD. PIN- 679 303. OTHER PRESENT: ADV B PREMOD FOR SC SUDHEER GANESH KUMAR THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30.09.2021, ALONG WITH WA.NO.1550/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: & & 13661 of 2016 11 S.V.BHATTI & VIJU ABRAHAM, JJ.

---------- & & 13661 of 2016 ---------- Dated this the 30th day of September, 2021

JUDGMENT

Viju Abraham, J.

The issues involved in these cases are common and therefore are heard together and disposed of by this common judgment. W.A.No.1550 of 2015 is treated as the leading case and we will advert to the brief facts pleaded in the said case.

2. In 1998 the Kerala State Electricity Board (hereinafter referred

to as "the Board") decided to give permission to private cable TV operators to draw cables through the electric poles owned by the Board at a fixed pole rent of Rs.1/- per pole per year and the grant of right to draw cables was on first come first serve basis. In 2002 the Board enhanced the pole rent to Rs.17/- per pole, per year. Later the Board decided to give the said right to draw cables through their electric poles on tender-cum-auction basis as per Exhibit P1 Board order. Pursuant to Exhibit P1, the appellants applied for sanction to draw cables by submitting tenders and their tenders & & 13661 of 2016 12 were accepted. Exhibit P2 is the agreement executed by the first appellant on 07.04.2008. As per Clause 12 of Exhibit P2 agreement, in consideration of the facilities provided by the board, the cable TV operators shall make a payment of Rs.54/- per pole per annum for rural areas or the rate fixed by the board from time to time, in advance. It was further stated that as per Clause 15 of the agreement, the same shall be valid for 10 years, on the condition that the rate shall be increased by 12.5% every year. Clause 16 of the said agreement stipulates that yearly pole rent should be paid in advance. The Board by Exhibit P3 order dated 25.02.2012 decided to increase the annual pole rent with effect from 01.04.2011 at the rate of Rs.311/- per pole in urban areas and Rs.155.50 in rural areas. Thereafter the appellants were informed that the pole rent is unilaterally revised and enhanced from 2011 onwards at the rate of Rs.125/- per pole in rural areas and the appellants have to pay retrospective arrears of pole rent and service tax. In the said circumstance, the

appellants approached this Court filing W.P.(C) No.3200 of 2015, and the same was disposed of directing the

4th respondent to take a decision in the matter. Thereafter, Exhibit P4 order

was issued by the 4th respondent. Exhibit P4 is bad in as much as no enhancement of pole rent is possible other than what is agreed in Clause 12 of Exhibit P2 agreement and retrospective revision of pole rent is clearly in violation of the said clause. It is challenging the same W.P.(C) No.18967 & & 13661 of 2016 13 of 2015 was filed by the appellants.

3. The learned Single Judge considered W.P.(C) No.18967 of

2015 on 24.06.2015 and the following interim order was passed: "Admit. Sri.Jaice Jacob, Standing Counsel takes notice for the respondents. The petitioners shall pay pre-revised rate upto 24.2.2012 and the revised rate from 25.2.2012. The television cables shall not be dismantled if the arrears computed as above is paid. Time is granted till 15.7.2015 to clear the arrears." It is aggrieved by the said interim order that the present appeal is filed mainly contending that as per Clause 5 of Exhibit P3 new revised enhanced rates will be applicable to existing agreement holders only from the date of expiry of the present agreement and the learned Single Judge

did not take into consideration the same while issuing the interim order

dated 24.06.2015. W.A.No.30 of 2016 is also filed challenging a similar interim order passed on 26.06.2015 in W.P.(C) No.14990 of 2015 and in view of the pendency of W.A.No.1550 of 2015, other writ petitions subsequently filed as W.P.(C) Nos.18967 of 2015, 22999 of 2015, 26523 of 2015, and 13661 of 2016 were also posted along with the said appeals as the issue involved in these cases are one and the same. Even though interim orders passed by the learned Single Judge in W.P.(C). No.18967 of & & 13661 of 2016 14 2015 and 14990 of 2015 are challenged in W.A. No.1550 of 2015 and W.A. No.30 of 2016 respectively since

we are considering and disposing of other similar writ petitions posted along with the same, we are disposing of W.P. (C). No.18967 of 2015 and 14990 of 2015 also as per this judgment.

4. The main contention of the appellants/petitioners is that as per

Clause 15 of Exhibit P2 agreement executed on 07.04.2008, the agreement shall be valid for a period of 10 years, with a condition that the rate shall be increased by 12.5 % every year. It is also contended that the rate fixed as per the agreement was Rs.54/- per pole per annum and the Board is bound to comply with the terms of the agreement from 2008 to 2018, i.e., the period of the agreement, at the rate fixed in the agreement with 12.5 % increase in the pole rent every year. It is also contended that the Board as per Exhibit P3 unilaterally increased the annual pole rent with effect from 01.04.2011. The retrospective enhancement of pole rent in respect of existing agreement holders is clearly illegal and therefore Exhibit P4 is liable to be set aside. It was also contended that Clause 15 of Exhibit P2 protects the rate of pole rent as regards the cable TV operators who are having an existing agreement with the Electricity Board until the expiry of the period of the agreement. Clause 15 of Exhibit P2 is extracted below: "This agreement shall be valid for a period of 10 years w.e.f.1.1.2008 with the condition that the rates shall be & & 13661 of 2016 15 increased by 12.5% every year."

5. Per contra, the standing counsel for the Board would contend

that even in Exhibit P2 agreement the consumer has agreed to pay the amount at the rate fixed by the board from time to time. Clause 12 of the said agreement is relied on by the standing counsel in support of the above contention. Clause 12 of Exhibit P2 agreement is extracted below: "In consideration of the facilities provide by the Board, Cable TV operators shall make payment of Rs.108/- and Rs.54/- per pole per annum for urban/suburban areas and rural areas respectively or the rate fixed by the Board from time to time in advance. And whereas the Cable TV operator has accordingly remitted an amount of Rs.17,314/- (Rupees Seventeen Thousand Three Hundred and Fourteen only) vide Receipt No.326/4478 dt.31.3.08 and 836/4478 dt.4.4.08 of electrical Division, Chalakudy towards the rental charges for drawing cable (area to be specified) for the period from 4/08 to

be made on or before the expiry of one year for every subsequent years till the validity of the agreement. [emphasis supplied]

6. Further, it is contended by the Board that Exhibit P4 order was

issued by the board after considering all the relevant aspects and the & & 13661 of 2016 16 reason for revision of rates is clearly stated in Exhibit P4 order. The relevant portion of the Exhibit P4 order is extracted below: The undersigned carefully examined Board Orders related to the issue, statements of the petitioners and respondents etc., in detail and observed the following. The floor rate of pole rent fixed by the Board for rural areas vide

order read as (7) above was Rs.54/- per pole per year with

annual increase of 12.5%. As per the said order the pole rent for the rural area was Rs.54/- for 2002-03 and with 12.5% increase it would be Rs.60.75 in 2003-04 and so on. The rates applicable for 10 years for the period from 2002-03 to 2011-12 has been clearly stated in the Board order dated 10.1.2014 read as (6) above and the same are as shown below:

Year Percentage Rate 2002-03 12.50% Rs.54/- 2003-04 12.50% 60.75/- 2004-05 12.50% 68.34 2005-06 12.50% 76.88 2006-07 12.50% 86.49 2007-08 12.50% 97.30. 2008-09 12.50% 109.46 2009-10 12.50% 123.14 2010-11 12.50% 138.53 2011-12 12.50% 155.50.

Here the agreements have been executed at different period; but in all the agreements, the rate fixed was Rs.54/- instead of the actual rate due for each financial & & 13661 of 2016 17 year as shown above. In this connection it is also seen that the petitioners have not executed agreements for the additional poles that were regularized after remitting the rent at penal rates but supplemented to the previous agreements. Also the agreement executed by Sri.K.S.Sumesh (No.10/2006-07) and Sri.K.A.Thomas (No.09/2006-07) expired during the year 2013. [emphasis supplied)

7. Based on Exhibit P4 it is contended that agreements have

been executed at different periods of time but in all the agreements the rate fixed was Rs. 54/- instead of the actual rate due for each financial year as shown in the table given above and therefore Exhibit P4 is a well- considered order and no interference is called for.

8. As per the contention of the appellants/petitioners there is

violation of the terms of the contract in as much as Clause 15 of Exhibit P2 protected the rate of pole rent as regards the cable TV operators who are having an existing agreement with the Electricity Board until the expiry of the period of the agreement and therefore retrospective enhancement of pole rent to existing agreement holders is clearly illegal and therefore Exhibit P4 is liable to be set aside. The Board relying on Clause 12 of the said agreement would contend that even in Exhibit P2 agreement the consumer is bound to pay the amount at the rate fixed by the board from & & 13661 of 2016 18 time to time and they have exercised their right when an anomaly in the fixation of rate was noticed in as much as various agreements have been executed at different period of time but in all the agreements the rate fixed was Rs.54/- instead of the actual rate due for each financial year as applicable on the date of execution of the agreements. A perusal of Exhibit P4 order will show that the same was issued taking into consideration the various agreements executed by the appellants in W.A. No.1550 of 2015 wherein a uniform rate of Rs.54/- was fixed instead of the actual rate due for each financial year corresponding to the date of execution of those agreements.

9. The appellants/petitioners rely on the judgment dated

05.07.2016 in W.P.(C) No.13672 of 2013 and connected cases in support of the contention that the action of the Board is illegal. The learned single Judge while disposing of the batch of cases did not consider Clause 12 in Exhibit P2 agreement whereby the cable operators have also agreed for a rate fixed by the board from time to time. Learned single Judge also did not consider the facts leading to the revision of rent as enumerated in Exhibit P4 order. Therefore, the said judgment cannot be relied on in the facts and circumstances of these cases.

10. The issue involved in these cases is essentially the

interpretation of the clauses in an agreement/contract entered into between & & 13661 of 2016 19 the board and the appellants and the binding nature on parties the rates fixed by the Board from time to time. And also whether the signatory on behalf of the Board can enter into an agreement contrary to the explicit rates fixed by the Board from time to time. The mischief if any taking place in the matter is explained by Exhibit P4. Any contest to the said conclusion, is well available before a civil court and not under Article 226 of the Constitution of India. It is settled law that such controversy ought not to be resolved in a writ petition under Article 226 of the Constitution of India. Disputes arising out of the terms of such non-statutory contract or alleged breaches have to be settled by the ordinary principles of the Law of Contract.

11. In State of Bihar and others v. Jain Plastics and Chemicals

limited - (2002) 1 SCC 216, the Apex Court considered the scope of interference under Article 226 of the constitution of India for granting relief in case of an alleged breach of contract and held that the alleged breach of the contract by the party would depend upon facts and evidence and it is not required to be decided or dealt within a writ petition and that such serious disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be lead by the parties in a properly instituted civil suit rather than by a court exercising the prerogative of issuing writs. & & 13661 of 2016 20

12. Further, in Kerala State Electricity Board and others v.

Kurien. E. Kalathil and Others - (2000) 6 SCC 293 while considering an agreement executed on 16-09-1981 between the party respondent and the board, the Apex Court held that dispute arising out of the terms of contracts or alleged breaches have to be settled by the ordinary principles of the law of contract and the fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied and therefore the disputes relating to the interpretation of the terms and conditions of such a contract could not have been

agitated in a petition under Article 226 of the Constitution of India and the same is a matter for adjudication by a civil court or in arbitration if provided for in the contract.

13. In this batch of cases, the issue is regarding violation of the

terms of the agreement and a decision could be entered into only by examining the various terms of the agreement. The appellants/petitioners rely on Clause 15 of Exhibit P2 agreement which says that the agreement shall be valid for 10 years and contend that rates cannot be enhanced for 10 years except a yearly increase of 12.5%. On the contrary, the board relies on Clause 12 of Exhibit P2 agreement to contend that the contracting parties are bound to pay the rate fixed by the board from time to time in advance and that Exhibit P4 was issued strictly in terms of Exhibit P2 agreement. Such disputed questions of fact essentially interpreting the & & 13661 of 2016 21 terms of the contract cannot be resolved in a proceeding under Article 226 of the Constitution of India. We are of the considered view that these writ appeals/writ petitions are not maintainable, and therefore all the writ appeals and the writ petitions including W.P.(C) Nos.18967 of 2015 and 14990 of 2015 will stand dismissed. However, liberty is granted to the appellants and the petitioners to other remedies available under law, challenging the decision of the Board. Sd/- S.V.BHATTI JUDGE Sd/- VIJU ABRAHAM JUDGE cks & & 13661 of 2016 22 APPENDIX OF WP(C) 18967/2015

PETITIONER EXHIBITS EXT.P1 : COPY OF THE BOARD ORDER DTD.18.10.2002. EXT.P2 : COPY OF THE AGREEMENT DTD.7.4.2008 EXECUTED BY THE 1ST PETITIONER WITH THE KERALA STATE ELECTRICITY BOARD. EXT.P3 : COPY OF THE BOARD ORDER DTD.25.2.2012 ISSUED BY THE KERALA STATE ELECTRICITY BOARD. EXT.P4 : COPY OF THE LETTER DTD.27.5.2015 ISSUED BY THE 4TH RESPONDENT. EXT.P5 : COPY OF ADALATH SETTLEMENT DTD.8.8.2014.

RESPONDENTS' EXHIBITS NIL & & 13661 of 2016 23 APPENDIX OF WP(C) 22999/2015 PETITIONER EXHIBITS

EXHIBIT-P1: TRUE COPY OF THE BOARD ORDER DATED 18.10.2002. EXHIBIT-P2: TRUE COPY OF THE AGREEMENT DATED 31.03.2011 EXECUTED BY THE PETITIONER WITH THE KERALA STATE ELECTRICITY BOARD. EXHIBIT-P3: TRUE COPY OF THE BOARD ORDER DATED 25.02.2012 ISSUED BY THE KERALA STATE ELECTRICITY BOARD. EXHIBIT-P4: TRUE COPY OF LETTER DATED 29.05.2015 ISSUED BY THE 3RD RESPONDENT. EXHIBIT-P5: TRUE COPY OF ADALATH SETTLEMENT DATED 08.08.2014.

RESPONDENTS' EXHIBITS NIL & & 13661 of 2016 24 APPENDIX OF WP(C)NO.26523/2015

PETITIONER EXHIBITS EXHIBIT-P1: TRUE COPY OF THE AGREEMENT DATED 31.12.2010 ENTERED INTO BETWEEN THE 2ND PETITIONER AND ELECTRICITY BOARD. EXHIBIT-P1(A): TRUE COPY OF THE BOARD ORDER DATED 18.10.2002. EXHIBIT-P2: TRUE COPY OF AGREEMENT DATED 07.04.2008 EXECUTED BY ONE CABLE TV OPERATOR WITH THE KERALA STATE ELECTRICITY BOARD. EXHIBIT-P3: TRUE COPY OF THE BOARD ORDER DATED 25.02.2012 ISSUED BY THE KERALA STATE ELECTRICITY BOARD. EXHIBIT-P4: TRUE COPY OF ADALATH SETTLEMENT DATED 08.08.2014. EXHIBIT-P5: TRUE COPY OF THE ITNTERIM ORDER DATED 28.07.2015 OF THE DIVISION BENCH OF THIS HON'BLE COURT IN WA.NO.1550/2015. EXHIBIT-P6: TRUE COPY OF BOARD ORDER DATED 28.07.2015. EXT.P6 TRUE COPY OF BOARD ORDER DATED 28.07.2015. EXT.P7 TRUE COPY OF THE JUDGMENT IN WP(C) No.18162/2015 DATED 05.06.2016.

RESPONDENTS' EXHIBITS NIL & & 13661 of 2016 25 APPENDIX IN WP.(C) NO.13661 OF 2016 PETITIONERS' EXHIBITS: EXT.P1. TRUE COPY OF THE BOARD ORDER DATED EXT.P2. TRUE COPY OF THE AGREEMENT NO.80 DATED ON BEHALF OF HIS ENTERPIRSES, DHRISYA CABLES, WITH THE 2ND RESPONDENTS EXT.P3 TRUE COPY OF THE AGREEMENT NO.67 DATED PETITIONER ON BEHALF OF HIS ENTERPIRSES, SATLINE CABLE NETWORK CABLES, WITH THE 3RD RESPONDENTS EXT.P4 TRUE COPY OF THE AGREEMENT NO.68 DATED PETITIONER ON BEHALF OF HIS

ENTERPIRSES, SATLINE CABLE NETWORK CABLES, WITH THE 3RD RESPONDENTS EXT.P5 TRUE COPY OF THE AGREEMENT NO.86 DATED ON BEHALF OF HIS ENTERPIRSES, SATLINE CABLE NETWORK CABLES, WITH THE 3RD RESPONDENTS EXT.P6 TRUE COPY OF THE AGREEMENT 30/9/2008

EXECUTED BY THE 1ST PETITIONER ON BEHALF OF HIS ENTERPIRSES, SATLINE CABLE LINKS WITH THE 4TH RESPONDENTS EXT.P7 TRUE COPY OF THE DRAFT AGREEMENT SIGNED BY THE 2ND PETITIONER ON BEHALF OF HIS ENTERPIRSES, SATLINE CABLE NETWORK CABLES IN 2009 , WITH THE 2ND RESPONDENTS COVERING 120 POLES. EXT.P8 TRUE COPY OF THE DRAFT AGREEMENT SIGNED BY THE 2ND PETITIONER ON BEHALF OF HIS ENTERPIRSES, SATLINE CABLE NETWORK CABLES IN 2009 , WITH THE 2ND RESPONDENTS COVERING 136 POLES. EXT.P9. TRUE COPY OF THE AGREEMENT NO.81 EXECUTED BY THE 2ND PETITIONER ON BEHALF OF HER ENTERPIRSES, SATLINE CABLE NETWORK CABLES DATED 8/1/2007 WITH THE & & 13661 of 2016 26 2ND RESPONDENTS COVERING 141 POLES. EXT.9(A) TRUE COPY OF THE AGREEMENT SIGNED BY THE 2ND PETITIONER ON BEHALF OF HER ENTERPIRSES, SATLINE CABLE NETWORK CABLES IN 2009 WITH THE 2ND RESPONDENTS COVERING 150 POLES. EXT.P(B) TRUE COPY OF THE AGREEMENT NO.69 EXECUTED BY THE 2ND PETITIONER ON BEHALF OF HER ENTERPIRSES, SATLINE CABLE NETWORK CABLES DATED 18/12/2006 WITH THE 2ND RESPONDENTS.

EXT.10. TRUE COPY OF THE BOARD ORDER DATED EXT.P11. TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT DATED 15/1/2016 DEMANDING AN AMOUNT OF RS.3,77,694/-. EXT.P12. TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT DATED 23/2/2016 DEMANING AN AMOUNT OF RS.2,34,208 FROM THE 1ST PETITIONER EXT.P13. TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 4TH RESPONDENT DATED 24/8/2015 DEMANING AN AMOUNT OF RS.1,17,151/- FROM THE 1ST PETITIONER EXT.P14. TRUE COPY OF THE LETTER WRITTEN BY THE 1ST PETITIONER DATED 29/12/2015 ISSUED BEARING THE ENDORSEMENT OF THE 4TH RESPONDENT EXT.P.15 TRUE

COPY OF THE DEMAND NOTICE DATED RESPONDENTDEMANING AN AMOUNT OF RS.8,51,909/-. RESPONDENTS' EXHIBITS NIL

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