

IN THE HIGH COURT OF SINDH AT KARACHI,

Suit No. 1263 of 2011

Plaintiff : Karachi Water & Sewerage Board, through
M/s. Abrar Hassan and Masroor Ahmed,
Advocates

Defendant No.1 : Karachi Electric Supply Corporation, through
M/s. Abid S. Zuberi, Ayan Mustafa Memon
and Sheeren Chughtai, Advocates

Defendant No.2 : Federation of Pakistan, through Secretary
Finance Division, Block 'Q' Pak-Secretariat,
Islamabad (Nemo)

Defendant No.3 : Province of Sindh, through Secretary, Local
Government, Government of Sindh, through
M/s. Salman Talibuddin, Advocate General,
Sindh, Ms. Leela alias Kalpana Devi, Addl.
A.G and Ziauddin Junejo, A.A.G Sindh.

Defendant No.4 : City District Government of Karachi (Nemo)

Date of hearing : 27.10.2020, 01.11.2021
Date of order : 18.11.2021

ORDER

ZAFAR AHMED RAJPUT.J:- Through this order, I intend to dispose of C.M.A. No. 12178/2018, filed on behalf of the defendant No.1 (*K- Electric*) under section 151, C.P.C. read with section 94, C.P.C. , seeking direction to the defendant No.3 (*Province of Sindh through Secretary Local Government*) to pay the current monthly bill of the plaintiff (*KW&SB*) to it and further develop and act upon a payment plan/schedule to pay off the outstanding electricity dues pertaining to the plaintiff in pursuance of the Order dated 18.05.2016 passed by the Hon'able Supreme Court in Civil Appeal No. 1358/2014, the letter dated 14.04.2016 issued by the Government of Sindh and the Summary, dated 22.02.2016, approved by the Chief Minister, Sindh.

2. It has been contended by the learned counsel for the defendant No.1 that the Hon'able Supreme Court was pleased to pass a consent order, dated 18.05.2016 in Civil Appeal No. 1358/2014, wherein the Apex Court devised

modalities of payments to the defendant No.1; however, the same has not been adhered by the plaintiff and the defendant No.3 and in result thereof the plaintiff owes colossal outstanding electricity dues amounting to Rs. 33,378,000,000=00 (*up to August 2021*) towards reconciled outstanding arrears, current monthly bills and other heads, as per following break-up:

<i>i. Outstanding Reconciled Arrears from November, 2005 till December, 2015:</i>	<i>Rs. 27,571,000,000=00</i>
<i>ii. Unpaid current monthly bills amount for the month of July to Aug, 2021:</i>	<i>Rs. 01,695,000,000=00</i>
<i>iii. ISPA arrear:</i>	<i>Rs. 443,000,000=00</i>
<i>iv. Allowance provided by the KE:</i>	<i>Rs. 03,669, 000,000=00</i>
<i>Total</i>	<i>Rs. 33,378,000,000=00</i>

It has further been contended by the learned counsel that in pursuance of the Summary, dated 22.02.2016, approved by the Chief Minister, Sindh and the Order, dated 18.05.2016, passed by the Hon'able Supreme Court, the defendant No.2 started paying the monthly bills of the plaintiff's 280 reconciled connections. The reconciliations of current monthly bills were undertaken by all the three parties i.e. the plaintiff and defendants No.1 & 3 and such monthly bills were duly paid from January 2016 till April 2018, thereafter, the same were stopped. It has also been contended by the learned counsel that the aforementioned three parties also reconciled the past dues/arrears pertaining to the plaintiff's 280 connections in accordance with the approved Proposal No.2 of the Summary, amounting to Rs. 27,570,855,957=00 but despite the reconciliation, the defendant No.3 failed to devise a payment schedule and pay the reconciled amount to the defendant No.1 and, therefore, instant application has been maintained. Learend counsel has added that the conduct of the defendant No.3 is in violation of the aforesaid Order of the Hon'able Supreme Court as it has failed to comply with the directions of the Apex Court in spirit despite providing an undertaking.

3. Conversely, Learned counsel for the plaintiff has maintained that the instant suit was filed by the plaintiff against the K-Electric praying therein that the K-Electric should not disconnect the meters which are protected from the disconnection in view of the agreement signed between Federal Government, Govt. of Sindh, K-Electric and KW&SB. He has further maintained that the Hon'ble Supreme Court has already held that according to the Summary dated 22.02.2016, the Chief Minister, Sindh has undertaken the payment of all electricity bills of the plaintiff after verification/reconciliation in seven days. He has also maintained that even otherwise the instant application is not maintainable as the payments claimed by the defendant No.1 being time barred, cannot be claimed at a belated stage.

4. The learned Advocate General, Sindh while referring to the comments filed by the Finance Department, Government of Sindh, to the application in hand has asserted that the arrears of the plaintiff pertain to the years 2005 to 2015 and at such time, the Government of Pakistan (*GoP*) had signed the Implementation Agreements with the defendant No.1 wherein the plaintiff was declared as "Strategic Customer" and, therefore, the claims of the plaintiff were to be paid by the GoP.

5. Heard the learned counsel for the parties as well as learned A.G. Sindh and perused the material available on record.

6. The plaintiff has filed the instant suit *inter alia* seeking declaration, direction and injunction to the effect that the Water and Sewerage Pumping Stations and adjacent plaintiff's labour colonies are vital installations; hence, the electricity thereof cannot be discontinued, more particularly the defendant No.1 cannot resort to punitive action of disconnecting the electricity before reconciliation of account. The plaintiff has sought direction to the defendant No.4 (*City District Government of Karachi, through Administrator*) to pay the

subsidy amount of Rs. 3.476 Billion to the plaintiff. The plaintiff has also sought direction to the defendants No.2 and 3 (*Federation of Pakistan, through Secretary Finance Division & Province of Sindh, respectively*) to release immediately the funds due to the plaintiff from various ministries/departments under their control.

7. On 25.04.2012, this Court while allowing *C.M.As. No. 10555/11, 10556/11 and 2737/12* in the instant suit, restrained the defendant No.1 from disrupting, discontinuing or reducing electricity supply to the plaintiff on account of non-payment of electricity charges as long as Implementation Agreement continues to remain in force and the defendant No.1 was further bound to comply with the other terms of Article II thereof which inhere to benefit of plaintiff/KW&SB. The said Order was impugned by the defendant No.1 in High Court Appeal No. 60 of 2012, which was dismissed vide Order, dated 14.04.2013. The defendant No.1 then preferred CPLA No. 803 of 2013 before the Hon'able Supreme Court, which was subsequently converted into Civil Appeal No. 1358 of 2014, wherein on 18.05.2016, the defendant No. 3 filed a Summary, dated 22.02.2016, approved by the Chief Minister, Government of Sindh, which was duly taken on record by the Apex Court. The proposals approved in the said Summary were as follows:

- I. *Approval may kindly be accorded to pay the current monthly power bills of KW&SB through energy department i.e. approximately amounting to Rs. 600-650 million per month for the next three (3) years (w.e.f 1st January 2016) or until KW&SB becomes financially able to pay power bills without any support from the Government of Sindh, whichever is earlier.*
- II. *Energy Department may please be directed to urgently reconcile the previous outstanding dues and develop a payment schedule regarding previous outstanding dues of K-Electric against KW&SB.*

III. *KW&SB to present a comprehensive restricting plan to the provincial cabinet within ninety (90) days with an aim to serve the people of Karachi better, improve operational efficiency and become a financially self-sustaining organization.*

On the same date i.e. 18.05.2016, the Honourable Supreme Court disposed of the said Appeal. The operative part of the Order is reproduced, as under:

“... That after the expiry of the Agreements dated 14.11.2005 and 13.04.2009, w.e.f 12.04.2016, the efficacy of the order challenged in this appeal has come to an end, therefore, this appeal has become infructuous. Further that the Appellant is willing not to disconnect the electric connection of Respondent No.1 (Plaintiff in the instant matter) in case they strictly abide by the terms of the letter dated 14.04.2016 issued by the Government of Sindh, Energy Department to the Secretary, Finance Department, Government of Sindh. A copy whereof has been placed on record along with CMA No. 3511 of 2016 read with the summary approved by the Chief Minister, Government of Sindh, copy whereof has been placed on record today and their further commitment that payment of all current electricity bills, after their verification/reconciliation in seven days will be made within 30 days of its generation....

The Apex Court further held:

“In case, there is any defiance of the undertaking/understanding mutually developed between the parties, as noted above, they will be at liberty to agitate their respective grievance before the Learned Single Judge in the High Court of Sindh, seized of the proceedings in the pending suit. This arrangement is without prejudice to the substantive rights of all the stakeholders which shall be subject to the final result of the pending suit”

(Emphasis supplied)

8. It appears that the defendant No.1 vide letters, dated 06.06.2018, 27.06.2018, 01.08.2018 & 03.08.2018, communicated to the plaintiff the defaults in payments and the total accumulated outstanding dues of approximately Rs. 31.68 Billion (up to July 2018) and Rs. 1.5 Billion since the month of May

2018 and the possibility of disconnecting the supply of power due to the continuous non-payments as per Section 24 (1) of Electricity Act, 1910. The defendant No.1 also requested the plaintiff vide letter, dated 06.06.2018, referring to the letter of Section Officer -I (EM & RC) vide ED/SO-1/EM&RC/SO-1/11-3/2018, dated 29.05.2018, wherein the EM & RC advised that the plaintiff shall pay electricity bills of all administrative and residential connections from its own sources, to ensure payments of twenty four administrative and residential connections (*including colonies, offices, and individual residential connections*) within scheduled due date to avoid levy of late payment surcharge and further accumulation of dues.

9. As regard the contention of learned counsel for the plaintiff that the claim of the defendant No.1 for payments is time barred, suffice it so say that the defendant No.1 is claiming his outstanding arrears every month in its monthly bills, but the plaintiff has failed to make the said payments and defaulted every month under the guise of reconciliation meetings and instant matter is sub-judice before this Courts; therefore, the claim of the payments is not time-barred. Even otherwise, the Government of Sindh has admitted the reconciled outstanding amounts in the reconciled statement attached with the instant application.

10. With regard to the instance taken by the learned A.G. Sindh, it may be observed that all the connections of the plaintiff are no longer treated as “Strategic Customer” as the above-mentioned Implementation Agreements, dated 14.11.2005 and 13.04.2009, have expired on 12.04.2016. Such fact reflects in the Order, dated 18.05.2016, passed by the Hon’able Supreme Court, and hence it was accepted by all the parties that a new arrangement of reconciliation and payments schedule will be devised by the defendant No.3. Furthermore, the defendant No.2 duly filed a Concise Statement in CPLA No. 803 of 2013 before the Hon’able Supreme Court wherein it declared that as per Article 2.1 (q) read

with Schedule 1 of the Amended Agreement, it is no longer responsible for payments of dues from Provincial/ Local Government Departments and that the necessary assurance in that regard was to be obtained from the defendant No.3. Article 2.1 (q) read with Schedule 1 of the Amended Agreement provides “*the general principles set out in Article 2.1 (q) of this Agreement shall be paramount and shall prevail as between the parties. The Parties will apply such principles as per the ECC decision dated 14.10.2008 and Cabinet Decision dated 08.04.2009*” The ECC decision dated 14.10.2008, para (c) (iii) provided that “for the payment of arrears by Provincial/Local Government Departments, necessary assurance may be obtained from the Government of Sindh, as Ministry of Finance or Water and Power cannot make any commitment on behalf of Provincial/Local Government...”. As such, after the said revised arrangement, the payment liability in respect of the plaintiff’s default was no longer with the defendant No.2 but was shifted to the defendant No.3; therefore, it is not the defendant No.2 but the defendant No.3 that is liable to pay the reconciled amount and monthly bills of the plaintiff, that has already accepted liability to pay the past as well as future dues of the plaintiff.

11. I am mindful of the fact that the non-payment of dues would cause grave financial loss to the defendant No.1, which is also contributing to the circular debt. If the alleged payment is not made, the defendant No.1 will be unable to buy recourses for distributing electricity to its consumers in general. This will not cause an irreparable loss to the defendant No.1 but also to the public in large.

12. For the foregoing facts and reason, I allow this application (C.M.A. No. 12178/2018) by directing the defendant No. 3 to pay the outstanding reconciled electricity dues of the plaintiff to the defendant No. 1 by devising a payment schedule as per its undertaken within a period of three months hereof and to pay the current monthly bills in terms of the Summary, dated 22.02.2016, approved

by the Chief Minister, Sindh and the Order dated 18.05.2016 passed by the Hon'able Supreme Court of Pakistan.

Athar Zai

JUDGE