

Sunny K.Peter vs The Kerala State Electricity Board on 7 October, 2026

CNR : KLHC010294252006

RFA NO. 422 OF 2006 &

RFA NO. 470 OF 2006

1

2026:KER:76964

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

WEDNESDAY, THE 7th DAY OF OCTOBER 2026 / 15th ASWINA, 1948

RFA NO. 422 OF 2006 (A)

AGAINST THE JUDGMENT & DECREE DATED 05.09.2005 IN OS

NO.713 OF 1996 OF I ADDITIONAL SUB COURT,

THIRUVANANTHAPURAM

APPELLANT/PLAINTIFF:

SUNNY K.PETER, ENGINEERING CONTRACTOR,
INTERNATIONAL HOTEL, POST BOX NO.3563,
M.G.ROAD, ERNAKULAM, COCHIN – 682 035.
BY ADV SHRI.RAJIV ABRAHAM GEORGE

RESPONDENTS/DEFENDANTS:

1 THE KERALA STATE ELECTRICITY BOARD
REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVANAM,
PATTOM, THIRUVANANTHAPURAM – 4.

2 THE CHIEF ENGINEER (CIVIL) NORTH,
KERALA STATE ELECTRICITY BOARD,
VYDYUTHI BHAVANAM, KOTTAPURAM ROAD,
TRICHUR – 680 004.

BY ADV SRI.S.SUJIN
SRI.B.PRAMOD, SC, KSEB B/O
SRI.C.K.KARUNAKARAN, SC, FOR KSEB
Dr.THUSHARA JAMES (B/O)

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON
11.08.2026, ALONG WITH RFA.470/2006, THE COURT ON
07.10.2026 DELIVERED THE FOLLOWING:

CNR : KLHC010294252006

RFA NO. 422 OF 2006 &

RFA NO. 470 OF 2006

2

2026:KER:76964

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

WEDNESDAY, THE 7th DAY OF OCTOBER 2026 / 15th ASWINA, 1948

RFA NO. 470 OF 2006 (E)

AGAINST THE JUDGMENT & DECREE DATED 05.09.2005 IN OS

NO.713 OF 1996 OF I ADDITIONAL SUB COURT,

THIRUVANANTHAPURAM

APPELLANTS/DEFENDANTS:

1 THE KERALA STATE ELECTRICITY BOARD
REP.BY ITS SECRETARY, VAIDYUTHI BHAVAN,

PATTOM, THIRUVANANTHAPURAM.

2 THE CHIEF ENGINEER (CIVIL) NORTH
KERALA STATE ELECTRICITY BOARD,
VAIDYUTHI BHAVAN, KOTTAPPURAM ROAD, THRISSUR.
BY ADVS. SRI.S.SUJIN
SHRI.B.PREMOD, SC, KSEB B/O
Dr. THUSHARA JAMES B/O

RESPONDENT/PLAINTIFF:

SUNNY K PETER, ENGINEER
CONTRACTOR AND PLANTER, INTERNATIONAL HOTEL,
P.B.NO.3563, M.G.ROAD, ERNAKULAM, KOCHI.

BY ADV SHRI.RAJIV ABRAHAM GEORGE
THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON
11.08.2026, ALONG WITH RFA.422/2006, THE COURT ON
07.10.2026 DELIVERED THE FOLLOWING:

CNR : KLHC010294252006

RFA NO. 422 OF 2006 &
RFA NO. 470 OF 2006

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2026:KER:76964

JUDGMENT

[RFA Nos.422/2006, 470/2006] These appeals arise out of the judgment and decree dated 05.09.2005 passed by the 1st Additional Sub Court, Thiruvananthapuram, in O.S. No.713 of 1996. RFA No.422 of 2006 is filed by the plaintiff-contractor, aggrieved by the rejection of several of his claims. RFA No.470 of 2006 is filed by the Kerala State Electricity Board ("the Board"/"KSEB") and its officials, confined to the grant of Relief 'A' (escalation on de-watering charges) to the contractor. Since both appeals arise from the same judgment and decree, they are disposed of by this common judgment. For convenience, the parties are referred to as they stood before the trial court.

2. The Board/defendants had invited tenders for the Kuttiyadi Augmentation Scheme - Driving of diversion tunnel from CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 4 2026:KER:76964 Karamanthodu to Kuttiyadi Reservoir, dated 19.11.1981, wherein the plaintiff's tender, after negotiation, culminated in a formal agreement dated 08.07.1983 for an agreed cost of Rs.1,83,49,189/- plus Rs.19,53,905/-. The work, though scheduled to be completed by 24.12.1985, was completed only on 28.02.1989, allegedly on account of extra/alterd items, delays and breaches attributable to the Board, as well as power failures and de-watering difficulties. After the final bill dated 24.09.1993, for Rs.5,24,40,462/- fixed by the Board, the plaintiff raised several claims which were not settled, leading to the institution of the suit claiming a total of Rs.1,18,02,469/- together with interest at the rate of 18% per annum.

3. The claims made in the suit are as under:

3.1. Relief 'A' was regarding escalation on dewatering along with interest at 18% per annum from 01.04.1989, the date when the final bill should have been paid, till realisation.

CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 5 2026:KER:76964 3.2. Relief 'B' was with regard to escalation on the amount of Rs.19,53,905/- arrived at in lieu of the clarifications and modifications agreed to by the plaintiff from the original modifications submitted along with the tender, along with interest at 18% per annum from 01.04.1989, the date when the final bill should have been paid till realisation.

3.3. Relief 'C' was a claim for an amount of Rs.11,84,263.80 by way of interest at 18% per annum as compensation for losses on account of delay in release of escalation on labour charges of Rs.26,37,982.53 for work done in 1985, belatedly paid on 16.03.1988.

3.4. Relief 'D' was claimed for an amount of Rs.6,29,125/- by way of interest at 18% per annum as compensation for losses on account of delay in release of escalation on labour charges of Rs.16,34,524/- for work done in 1986, belatedly paid on 22.08.1988.

3.5. Relief 'E' was for an amount of Rs.2,34,290.39 by way of interest at 18% per annum as compensation for losses on account of delay in release of escalation on labour charges of Rs.10,23,241/- for CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 6 2026:KER:76964 work done in 1987 and 1988, which was belatedly paid on 27.02.1989.

3.6. Relief 'F' was with respect to Rs.7,05,857.86 by way of interest at 18% per annum as compensation for losses on account of withholding Rs.32,97,978.92 for

extra items of work done and completed by April 1988 and due payment from 01.06.1988, which was belatedly paid on 09.08.1989.

3.7. Relief 'G' was for an amount of Rs.21,13,890/- by way of compensation for losses caused on account of infructuous expenditure on hire charges of tools and plants and idle labour for a total period of 4546 hours lost due to power failures and interruptions and non-provision of alternative power through diesel generators.

3.8. Relief 'H' was for an amount of Rs.6,55,672.50 by way of compensation for losses caused on account of infructuous expenditure on hire charges of tools and plants and idle labour for a total period of 1040.75 hours lost during dewatering the tunnel due CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 7 2026:KER:76964 to power failures and interruptions in supply.

3.9. Relief 'I' was with respect to an amount of Rs.1,16,931.40 by way of balance due in the final bill over and above the amounts claimed under the other reliefs in the suit.

3.10. Relief 'J' was for Rs.9047.90 towards refund of excess recovery towards recovery of mobilisation advance, including interest amounting to Rs.4908.15.

3.11. Relief 'K' was for an amount of Rs.83,803/- by way of compensation for the losses on account of unlawfully retaining an amount of Rs.1,03,492/-, being the balance retention amount due for release by 31.03.1989 and actually released on 29.10.1993.

3.12. Relief 'L' was for refund of Rs.3 lakhs appropriated by encashing 3 Bank Guarantees on 06.06.1990 along with interest at 18% per annum from 06.06.1990 till realisation.

4. The trial court framed issues as to whether the claim of the plaintiff is barred by estoppel, whether the defendants committed breach of contract, whether the plaintiff suffered any CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 8 2026:KER:76964 loss on account of the breaches on the part of the defendants, whether there was delay in preparing final bill, whether final bill prepared is without including the correct amount due to plaintiff, whether unrecoverable items were included in the bill as recoverable items, whether delay in completing the work was on account of breaches on the part of the defendants, whether final bill was not correctly prepared, whether the suit is barred by limitation and whether the plaintiff is entitled to get the amounts as claimed by him?

5. The trial court granted partial relief -- decreeing the claim on escalation for de-watering (Relief 'A') together with interest at 6% per annum from the date of suit, and partly allowed Relief 'I'; and rejected the other claims relating to interest/compensation for delayed release of labour escalation for the years 1985, 1986, and 1987-88 (Reliefs 'C', 'D' and 'E'), the claim for compensation for delayed

payment of extra items (Relief 'F'), the claim for refund of Rs.3,00,000/- appropriated by encashment of CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 9 2026:KER:76964 three bank guarantees (Relief 'L'), besides certain other reliefs not now in appeal. In this appeal, the plaintiff confines his challenge to Reliefs 'A' (only as to the rate of interest), 'C', 'D', 'E', 'F' and 'L'. The plaintiff does not appeal against the rejection of Reliefs 'B', 'G', 'H', 'I', 'J' and 'K'. The Board, in its appeal, confines its challenge to the grant of Relief 'A'.

6. Learned counsel for the plaintiff/contractor, Sri Rajiv Abraham George and Sri. Sathish Mohan made the following submissions in respect of each of the disputed reliefs:

6.1. Relief 'A' (escalation on de-watering): De-watering was not originally a scheduled item, but was expressly brought within the contract through Stipulation 14 of Ext.B1(a), as varied, making the general price-escalation clause [Stipulation 2/2(e)] applicable to its labour and POL components. Though the trial court correctly upheld the entitlement to escalation of Rs.13,67,048.62, it erred in restricting interest to 6% per annum from the date of suit, and the plaintiff is entitled to the further compensation of an additional 6% CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 10 2026:KER:76964 (i.e., a total of 12% per annum), the amount having remained unpaid throughout.

6.2. Reliefs 'C', 'D' and 'E' (labour escalation for 1985, 1986 and 1987-88 respectively): Payments under the contract were due within one month of each certificate under Clause E1.049 read with Clause H.12.01. Escalation on labour had in fact been paid by the Board from CC-1 & Part Bill to CC-17 & Part Bill on the footing that Ext.A-12 notification dated 30.03.1983 [which superseded the earlier 1977 notification, Ext.B1(d)] governed minimum wages from 01.04.1983. Despite this, escalation due from CC-18 & Part to CC-26 & Part (Rs.26,37,982.53, for work done in 1985) was withheld and paid only on 16.03.1988; similarly, amounts for 1986 (Rs.16,34,524/-) were paid on 22.08.1988, and for 1987-88 (Rs.10,23,241/-) on 27.02.1989. The stand of the second defendant in the Ext.A14 letter dated 21.05.1985 was a deliberate device to avoid the already-settled position, since the wordings of Ext.B1(d) and Ext.A12 were identical.

Any doubt the Board may have entertained stood conclusively CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 11 2026:KER:76964 resolved by the Ext.A18 letter dated 24.02.1986 of the Regional Joint Labour Commissioner, Kozhikode, affirming the applicability of Ext.A12, yet payment continued to be withheld for years thereafter.

6.3. The necessary escalation indices (Consumer Price Index, Wholesale Price Index, statutory minimum wages, fuel prices) were all public-domain data, and detailed calculations (Ext. A50) were, in any event, produced from the Board's own 'M' Books. Approximately Rs.53 lakhs was thus wrongfully withheld for periods ranging from three to four years, entitling the contractor to compensation, now reduced to 12% per annum in this appeal (as against 18% originally claimed in the suit).

6.4. Relief 'F' (delayed payment for extra items -- Rs.32,97,978.92, due on 01.06.1988, paid on 09.08.1989): The Board's justification that payment awaited execution of a supplemental agreement based on "observed data" is untenable because such data was itself compiled from field observations recorded during execution, under the direct supervision of the Board's own CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 12 2026:KER:76964 engineers. There was no justification for deferring execution of supplemental agreements for extra items until completion of the entire contract; this constituted a wanton breach resulting in withholding of a total of about Rs.33.77 lakhs. Payment of the value of work done being a reciprocal obligation of the employer under the contract, its unjustified withholding is itself a default disentitling reliance on any clause excluding interest. Compensation by way of interest at 12% per annum (reduced to 12% in this appeal from the 18% originally claimed in the suit) for the period of withholding is claimed.

6.5. Relief 'L' (refund of Rs.3,00,000/- appropriated by encashment of three bank guarantees on 06.06.1990): The Board's recovery of Rs.64,969/- towards hire charges, and its overall demand culminating in the encashment, rested on rates unilaterally and arbitrarily fixed under Ext.A33 Board Order dated 08.02.1990 (founded on an internal note dated 22.01.1990), in departure from the mechanism prescribed under Clauses E1.091, H1.13 (hire CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 13 2026:KER:76964 charges) and E1.093, H2.03 (sale value of non-obligatory materials). The hire charges recovered had, in fact, been steadily reducing (from about Rs.4,883/- to Rs.100/- in CC-56) before being clearly shown as Rs.64,969/- in the final bill. Despite the contractor's specific objection (Ext.B-115 letter dated 04.12.1989) drawing attention to Clause H.2.03, the Board proceeded to encash the bank guarantees on an unsubstantiated and arbitrary basis. The encashment being unlawful, refund with interest is claimed.

6.6. Learned Counsel for the plaintiff/contractor relied on the following judgments.

[Hyderabad Municipal Corporation v. M. Krishnaswami Mudaliar and Mudaliar and Ors. \[AIR 1985 SC 607\]](#), [Secretary, Irrigation Department, Government of Orissa and Ors. v. G.C. Roy and Ors. \[\(1992\) 1 SCC 508\]](#), The Board of Trustees for the [Port of Calcutta v. Engineers-De-Space-Age \[AIR 1996 SC 2853\]](#), [State of Bihar and Ors. v. Hanuman Mal Jain \[\(1997\) 11 SCC 40\]](#), Food CNR : KLHC010294252006 RFA

NO. 422 OF 2006 & RFA NO. 470 OF 2006 14 2026:KER:76964 Corporation of India v. A.M. Ahmed and Co. and Ors. [[AIR 2007 SC 829](#)], [Reliance Cellulose Products Ltd. v. Oil and Natural Gas Corporation Ltd.](#) [2018 (9) SCC 266], M/s [Ferro Concrete Construction \(India\) Pvt. Ltd. v. The State of Rajasthan](#) [2025 INSC 429], Oil and Natural Gas Corporation Ltd. v. M/s G and T Beckfield Drilling Services Pvt. Ltd [2025 INSC 1066], Fertilisers and Chemicals Ltd. v. Vellappally Brothers and Ors. [ILR 1983 (1) Ker. 48], [K. Abdulkhader v. State and Ors.](#) [1993 (2) [KLJ 977](#)], [State of Kerala v. Abdul Khadar](#) [2010 (3) KHC 598].

7. Learned counsel for the Board, Dr. Thushara James, resisted each of the above claims as follows:

7.1. On Relief 'A': Clause 14/Stipulation 14 of Ext.B1(a) is a special, self-contained provision for de-watering, under which payment is to be made "as per actuals or at Rs.10/- per H.P./hour, whichever is higher". The same is a fixed-rate mechanism distinct from the general price-escalation clause [Clause 2 of Ext.B1(a)], which applies only to items whose price is otherwise fixed in the CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 15 2026:KER:76964 contract and subject to market fluctuation. Since the Rs.10/- rate never fell below the actuals, there was no occasion or basis for escalation on de-watering charges, and the specific defence raised in the written statement was not considered by the trial court, rendering its finding on Relief 'A' unsustainable.

7.2. On Reliefs 'C', 'D' and 'E': The Board had been paying escalation up to CC-17 & Part Bill as per the agreed clauses. On the supersession of the 1977 notification by Ext.A12 (30.03.1983), a genuine doubt arose as to its applicability, on account of which further escalation payments were held back pending clarification.

Upon the Board obtaining the opinion of the then Advocate General, the Board vide B.O. dated 17.02.1988 decided to allow labour escalation as per Ext.A12, whereupon payments resumed. The delay was thus not deliberate but the natural consequence of a bona fide dispute or misunderstanding, squarely covered by Clause E1.079, which in terms bars any claim for interest or damages arising from delay in payment "in any respect whatsoever." Parties CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 16 2026:KER:76964 who voluntarily accepted a contract term denying interest cannot later turn around and assail it as oppressive, and courts ought not to rewrite a clearly worded clause, and that Clause E1.079 must be given full effect according to its plain terms.

7.3. On Relief 'F': Under Clause E1.038, payment for extra items becomes due only after execution of a supplemental agreement, the rates for which necessarily had to be worked out based on observed data, a process that took time. The contractor was,

in the interregnum, paid 75% of the value even before execution of the agreement, so that no delay is attributable to the Board. In any event, Clause E1.079 excludes any claim for interest on this count as well.

7.4. On Relief 'L': The sum of Rs.3,00,000/- was appropriated only after the contractor failed to remit Rs.2,50,000/- demanded under Ext.A34 letter dated 09.03.1990, based on Ext.A33 Board Order dated 08.02.1990 revising rates for hire charges and non-obligatory materials, following which a shortfall of about Rs.4 CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 17 2026:KER:76964 lakhs was found recoverable from the contractor. The hire charges were fixed strictly in terms of Clauses E1.091 and H1.13, and the value of non-obligatory items under Clauses E1.093 and H2.03. After adjusting the encashed amount, only Rs.64,969/- was ultimately recovered towards hire charges, and no relief was sought by the plaintiff specifically challenging the recovery that culminated in the encashment.

7.5. Learned counsel for the Board relied on the judgment in State of Haryana and Others. v. Jai Durgaa Finvest P. Ltd. [2026 SCC OnLine SC 1323].

8. Heard the learned counsel on both sides and perused the records.

9. The point for determination in these appeals is whether there was breach on the part of the defendants for the delay in making the payments due to the plaintiff and whether the trial court judgment is sustainable.

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10. As regards relief 'A ', namely de-watering, the relevant clause concerning the payment for the same is as follows:

Dewatering The Contractor must maintain the work sites sufficiently dewatered to enable work and inspections being carried out without any hindrance.

Stipulation 14-Dewatering Dewatering at 100 HP hours per day per adit will be the responsibility of the contractor. For dewatering above 100HP hours per day per adit, payment will be made as per actuals or at Rs.10/- per

H.P./hour (Rs.Ten/HP/hour), whichever is higher, or the KSE Board will make its own arrangement for the dewatering at the option of the Board.

10.1. The contractor's case is that the original Schedule of Items of Work forming part of the tender did not contain de-

CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 19 2026:KER:76964 watering as an item at all, as it only carried a general obligation under Clause H.7 to keep work sites dewatered. It was only at the tendering stage, once the contractor realised that considerable de- watering would be required, that the item was introduced through the Deviations and Conditions submitted with the tender, which was eventually accepted and became Stipulation 14 of Ext.B-1(a).

10.2. Once incorporated in this manner, the contractor argued, de-watering became a regular item of work under the contract like any other, attracting the general Price Escalation Clause [Stipulation 2/2(e)] in respect of its labour, petrol, oil and lubricant components, quite apart from the fixed Rs.10/HP/hours or actuals rate under Stipulation 14. The trial court had accepted this contention of the plaintiff and awarded Rs.13,67,048.62 as escalation, though it granted interest at only 6% instead of the 18% claimed in the suit, and the contractor sought a further 6% enhancement in this appeal. The correctness of the calculation of escalation as per formulae in Ext.A50 produced along with I.A. CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 20 2026:KER:76964 No.3492 of 2002 was never disputed by the defendants.

10.3. The Board's case is that Stipulation 14 is a self- contained, fixed-rate provision for de-watering, payable either as actuals or at Rs.10 per HP-hour, whichever is higher and that this excludes any separate claim for escalation. Since the Rs.10/HP-hour rate never exceeded the actual amount incurred, the Board argued there was no justification for the contractor to claim escalation on de-watering at all. It further contended that in all 56 part bills passed and paid, de-watering charges were added only after escalation had already been applied to the work bill, and since the contractor accepted those payments without objection, it was estopped from raising any further claim. The Board also relied on Clause E.1.079 to argue that the contractor was not entitled to interest in any event. It is also argued that escalation can only be claimed for items whose prices are fixed in the contract, and since the contractor had the option of being paid "actuals" for de- watering, the claim for price escalation cannot be claimed at all.

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10.4. On consideration of the rival contentions, it is relevant to note that stipulation 14 and the escalation clause operate on entirely different subject matter and do not exclude one another. Stipulation 14 merely fixes what is payable for the act of de-watering itself, whichever of the two rates is higher; it says nothing about, and does not purport to override, the separate mechanism under Stipulation 2/2(e) for escalation in the cost of the labour, petrol, oil and lubricants that go into performing that work. The Board's argument rests on an incomplete reading of the contract, since it treated the price fixed for the service as though it also governed the cost of the inputs used to deliver it, these being two distinct things under the scheme of the contract.

10.5. It follows that once de-watering was brought within the contract through Stipulation 14, it also became an item of work no different from any other, and there was no textual basis to carve it out from the general escalation clause that applied across the rest of the contract. The trial court's error in referring to Clause H.12.03 CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 22 2026:KER:76964 instead of Stipulation 2(e) is immaterial, since it did not affect the correctness of the ultimate conclusion that the actual calculation of escalation, as per the Ext.A-50 formula, was never disputed by the Board at any stage of the proceedings. In [Food Corporation of India v. A.M. Ahmed and Co.](#) [AIR 2007 SC 829], escalation was allowed even in the absence of an express provision for it in the original agreement, once entitlement was otherwise established on the facts and conduct of the parties, a principle to apply equally here, as escalation is to be treated as a routine event arising out of the gap of time, in an inflationary age, in performing any contract.

10.6. The estoppel argument based on the contractor's acceptance of the 56 part bills cannot be treated as answering the basic point that escalation and the de-watering rate are distinct and non-overlapping entitlements under the contract. On this basis, the Board's appeal, confined to this issue, is bound to fail, and the trial court's finding on entitlement to escalation has to be affirmed. As regards the interest granted, it is relevant to note that the CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 23 2026:KER:76964 defendants/the Board recovered the escalation on the pro-rata amount of Rs.19,53,905/- paid to the plaintiff in CC 1 to CC 12 and from CC 15 to CC 18 along with an interest of 18% per annum, allegedly in accordance with the terms of the agreement, even in the absence of any supporting provision in the contract. This recovery at the rate of 18% was upheld by the trial court. It is not clear why the same rate of interest was not adopted

by the court below while granting relief under 'A'. The court below erred in not applying the same criteria to both contracting parties.

10.7. On the question of interest, since the amount of Rs.13,67,048.62 had remained unpaid from 31.03.1989 onward, the trial court's award of interest at 6% is found inadequate to compensate for the prolonged deprivation of funds, and interest is accordingly enhanced to 12% per annum in place of 6% from the date of suit till realisation.

11. As regards Reliefs 'C', 'D' and 'E' are concerned, the central defence raised by the Board to resist interest/compensation CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 24 2026:KER:76964 claimed is by relying on Clause E1.079 of the General Conditions of Contract, which reads as follows:

"Clause E1.079 - No claim for delayed payment due to dispute etc. No claim for interest or damages will be entertained by the Board with respect to any money or balance which may be lying with the Board owing to any dispute, difference or misunderstandings between the Engineer on the one hand and the contractor on the other hand or with respect to any delay on the part of the Engineer-in-charge in making periodical or final payment or in any respect whatsoever and the Board shall not be liable for any interest or damages or loss to the contractor."

11.1. The true scope of Clause E1.079 is decisive for the three claims, C, D and E, which all concern delayed release of labour escalation for different periods. Being an exclusionary clause seeking to cut down a right that would otherwise accrue to the contractor, it has to be strictly construed against the party, the Board, that seeks to rely on it. As held in *Fertilisers and Chemicals Ltd. v. Vellappally Brothers and Ors.* [ILR 1983 (1) Ker. 48], an CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 25 2026:KER:76964 ambiguity in an exclusion clause must be resolved against the party who inserted it and now relies on it, and that such a clause avails a party only while it is carrying out its own obligations in essential respects, and not as a cover for a breach going to the root of the contract. This is consistent with the broader principle, recognised in [Secretary, Irrigation Department, Government of Orissa and Ors. v. G.C. Roy and Ors.](#) [(1992) 1 SCC 508] and reiterated in *The Board of Trustees for the Port of Calcutta v. Engineers-De-Space-Age* [AIR 1996 SC 2853], that a person deprived of money legitimately due to him has a right to be compensated for that deprivation, whatever name is given to the compensation, and that a clause is to be strictly construed for precisely this reason.

11.2. The later decisions in [Reliance Cellulose Products Ltd. v. Oil and Natural Gas Corporation Ltd.](#) [2018 (9) SCC 266], *M/s Ferro Concrete Construction (India) Pvt. Ltd. v. The State of Rajasthan* [2025 INSC 429] and *Oil and Natural Gas Corporation*

Ltd. v. M/s G and T Beckfield Drilling Services Pvt. Ltd [2025 INSC 1066] also hold CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 26 2026:KER:76964 that a clause of this kind will not be read as an express bar unless its language clearly and specifically covers the very contingency relied upon, and that a bar on interest for delayed payment is not, without more, to be readily inferred as covering every kind of default. So construed, Clause E1.079 can protect the Board only where there exists, in fact, a genuine and continuing "dispute, difference or misunderstanding" between the Engineer and the contractor. It cannot be invoked to shield the Board's own unilateral doubt, particularly one that persists after the very doubt has been authoritatively resolved. The decision in [State of Haryana and Others v. Jai Durgaa Finvest P. Ltd.](#) [2026 SCC OnLine SC 1323], relied upon by the Board for the proposition that a clearly worded clause denying interest must be given full effect and cannot be rewritten by the Court, does not assist the Board here as that case concerned a clause denying interest on a security deposit in unambiguous and unconditional terms, breach of which was not in issue, whereas Clause E1.079 is, on its own language, confined to genuine disputes, CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 27 2026:KER:76964 differences or misunderstandings, and the question here is precisely whether such a dispute subsisted throughout the period of withholding, a question of fact, not one of rewriting the clause.

11.3. In this case, the applicability of Ext.A12 was placed beyond controversy at the latest by Ext.A18 letter dated 24.02.1986 of the Regional Joint Labour Commissioner. The Board has no case that it doubted the correctness of Ext.A18 or that it took any steps to question it. Yet, escalation for 1985 was withheld until 16.03.1988, over two years after Ext.A18 and escalation for 1986 and 1987-88 was withheld until 22.08.1988 and 27.02.1989, respectively. This continued withholding, long after the alleged "doubt" stood dispelled, cannot be justified as attributable to a bona fide dispute within the meaning of Clause E1.079 and it has to be characterised as an avoidable breach of the Board's payment obligations under Clauses E1.049 and H.12.01, of the kind that takes a claim outside the protection of such a clause: [State of Bihar and Ors. v. Hanuman Mal Jain](#) [(1997) 11 SCC 40]. This conclusion draws further support CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 28 2026:KER:76964 from [Hyderabad Municipal Corporation v. M. Krishnaswami Mudaliar and Mudaliar and Ors.](#) [AIR 1985 SC 607], where a clause denying interest on amounts retained by the employer was held not to avail a party which was itself in default. The Board's own conduct in paying identical escalation up to CC-17 on the basis of Ext.A12, its access at all times to the escalation indices (which were public- domain data) and to the calculations verifiable from its own 'M' Books, reinforces this conclusion.

11.4. The learned counsel for the Board argues on the basis of the clause [referred to above](#) that irrespective of whether the dispute or the differences are genuine or not, the clause prevents any interest or additional payments to the contractor, and therefore no relief can be granted to the contractor. The trial court's rejection of Reliefs 'C', 'D' and 'E' solely on the strength of Clause E1.079, without examining whether a genuine dispute in fact subsisted through the entire period of withholding, cannot be sustained. At any rate, the above clause cannot deter a court from CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 29 2026:KER:76964 granting interest/compensation if the plaintiff is otherwise entitled, which in this case is. The contention of the Board cannot be accepted for the reasons already stated and therefore the plaintiff is entitled to succeed as far as his claims under 'C', 'D' and 'E' are concerned. The contractor is entitled to compensation for the delayed release of these admitted amounts, by way of interest calculated at 12% per annum (as against the 18% originally claimed) for the respective periods of delay. The issue is answered accordingly.

12. As regards Relief 'F' claimed in the suit, namely interest at the rate of 18% per annum as compensation for losses on account of withholding of Rs.32,97,978.92 for the extra items of work done and completed by April 1988, when the payment was due from 01.06.1988 and was paid belatedly only on 09.08.1989, the said claim was rejected by the Trial Court. In this appeal, the compensation calculated as interest at the rate of 12% per annum is claimed on the withheld amount from 01.06.1988 to 09.08.1989.

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12.1. Learned counsel for the Electricity Board would contend that as per Clause E1.038 of the agreement, the contractor is bound to execute supplemental agreements regarding the extra items found necessary during execution, and that the payment for the said items will be made only after executing them. Since there was a delay in executing the supplemental agreement relating to extra items, and the delay was due to the delay in finalising the rates of various items, and since the contractor was paid 75% of the amount before executing the agreement, no delay can be attributed to the Board. It is also submitted that since the rates had to be worked out based on observed data, it took some time for preparation and finalisation of the

data for such extra items. As regards the claim under relief 'F' also, the Board relies on Clause E1.079 to avoid payment, on account of the delay. Learned counsel for the appellant would contend that the respondents delayed the payment due for the extra works on the ground that the same could be paid only after execution of the supplemental agreement for extra items, CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 31 2026:KER:76964 which had to be based on observed data calculations.

12.2. On consideration of the rival contentions, it is to be noted that observed data is essentially data collected from field observations, collected at the time of execution of the said items to provide real-time insights into the quantity of materials, equipment, labour and other inputs and the costing thereof that would be required to safely and efficiently execute a unit of the said item. It was based on such data that the Plaintiff had been conveying its rates for the same. It is to be kept in mind that all items of work, whether extra, alternate, substituted or agreed items, had to be executed under the direct supervision of the Board's Engineers, which was done. Thus viewed, the reason alleged for delay in execution of Supplemental Agreement being observed data calculations cannot stand the test of facts and/or law.

12.3. Hence, the non-execution of supplemental agreements at various stages for the extra items executed from time to time and the action of the Board to wait for completion of CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 32 2026:KER:76964 the entire work under the contract before executing a supplemental agreement, in the light of the correspondence, will be seen to be wanton breach of contract resulting in the withholding and delayed release of a total of Rs.33.77 lakhs only in August 1989, of amounts that became payable from August 1986 onwards when CC 34 was submitted. The impugned judgment also finds delay in the preparation and finalisation of the final Bill by the Respondents.

12.4. The Board's explanation for the delay that supplemental agreements for extra items could be finalised only after "observed data" calculations cannot be accepted. Observed data, as stated earlier, is generated from field observations recorded contemporaneously with execution, under the Board's own engineers' supervision; there is nothing on record to show that this data could not have been compiled and supplemental agreements executed progressively, item by item, as the work proceeded, rather than being deferred, as they were, until completion of the entire contract. This pattern of deferring execution of supplemental CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 33 2026:KER:76964 agreements, resulting in withholding of a substantial sum (about Rs.33.77 lakhs) that had fallen due from 01.06.1988 and was released only on 09.08.1989, constitutes an unjustified breach of the Board's payment obligations, and cannot be excused merely by invoking Clause E1.079, for the same reasons set out in respect of Reliefs 'C', 'D' and 'E', a self-inflicted procedural delay which is not a

"dispute, difference or misunderstanding" within the meaning of that clause, but an avoidable delay of the kind held to fall outside such a clause.

12.5. The general argument of the Board that Clause E1.079 disentitles the contractor from getting any additional amount of interest is subject to the condition that a bona fide dispute arises between the parties to the contract, and not in cases where one party entertains a doubt for some time which had no basis whatsoever and later makes the payment. Payment for work executed being a reciprocal obligation of the Board under the contract, its default in that obligation cannot simultaneously be pressed into service to defeat the contractor's claim to CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 34 2026:KER:76964 compensation. It was held in [K. Abdulkhader v. State and Ors.](#) [1993 (2) KLJ 977] and [State of Kerala v. Abdul Khadar](#) [2010 (3) KHC 598], that delay/default of the employer in a reciprocal obligation disentitles it from imposing the consequences of delay upon the contractor, and interest at 12% per annum was awarded on that basis.

12.6. The reasoning of the trial court for not granting the relief under 'F' was that the plaintiff was paid 75% of the amount before executing the supplemental agreement, which reveals that the defendants were sympathetic towards the plaintiff and further that there was no deliberate intention on their part in delaying or fixing the value of the work and the rate of schedule items. Thus, the trial court found that it took some time for the preparation and finalisation of data and therefore the plaintiff was not entitled to recover compensation from the defendants. This reasoning cannot be accepted at all. While construing the terms of a contract or determining whether there was a delay in making the payment due CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 35 2026:KER:76964 to the contractor, there was no room for any sympathetic consideration to be extended to any of the contracting parties.

12.7. Consequently, the contractor is entitled to compensation by way of interest at 12% per annum on Rs.32,97,978.92 for the period from 01.06.1988 to 09.08.1989. The issue is answered accordingly.

13. As regards Relief 'L' namely, refund of Rs.3,00,000/- appropriated by encashing 3 bank guarantees on 06.06.1990 along with interest, the plaintiff would contend that the Board was recovering the value of non-obligatory materials (including 20% storage charges and sales tax/additional sales tax) under clause H.2.03, as hire charges of machinery, tools and plants under clause E.1.091 read with H.1.13 and such amounts were shown as kept under deposit. It is also stated that, later, in CC No.56/Part Bill dated 31.08.1989, hire charges of tools and plants were shown as only Rs.100/-, while in CC No.57/Final Bill, it jumped to Rs.64,969/- with no supporting details produced. In fact, a perusal of bills from CNR :

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13.1. It is also submitted that the value of non-obligatory materials/hire charges had always been recovered based on then prevailing Board rates from CC No. 1 onwards. The demand for Rs.2.50 lakhs as per Exhibit A34 was instead based on a Board order dated 08.02.1990, which was after the relevant period of work, whereby new rates were fixed as per order dated 22.01.1990 of the Chief Engineer, Kerala State Electricity Board. This was brought to the notice of the Chief Engineer by letter dated 04.12.1989, Ext.B-115 explaining as to why the recovery for the non-obligatory materials was wrongly worked out.

13.2. The Board contested the above claim, contending that Rs.3,00,000/- was appropriated by encashing 3 bank guarantees of Rs.1,00,000/- each on 06.06.1990, since it represented amounts owed CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 37 2026:KER:76964 by the appellant for hire charges of machinery, tools and plants, and for cost of non-obligatory items which remained unpaid. Reliance is also placed on Exhibit A34 = P 150 dated 09.03.1990 calling upon the contractor to remit Rs.2.50 lakhs within one week, which was not complied with, which led to the encashment. It is also submitted that during construction, non-obligatory items of materials, tools and plants were issued to the contractor, with only provisional recoveries in part bills towards their sale value.

13.3. It was Ext. A33, the Board order dated 8.2.1990, which finalised the rates for those items, and since it was found that the earlier recoveries were short and Rs.4,00,000/- remained as liability of the contractor, the bank guarantees were encashed. It is also stated that a separate statement was appended to the final Bill, which showed that out of Rs.1,42,939/-, an amount of Rs.64,969/- was recovered towards hire charges. The balance recoverable towards the sale of non-obligatory items was Rs.74,356/- and towards hire charges was Rs.2,90,611/-. Adjusting the 3 bank CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 38 2026:KER:76964 guarantees, the net balance to be recovered was worked out as Rs.64,969/-, which was recovered towards hire charges from the final Bill.

13.4. The material on record shows that the rates on the strength of which the Board raised its demand (Ext.A34) and proceeded to encash the bank guarantees were fixed under Ext.A33 Board Order dated 08.02.1990, itself founded on an internal note dated 22.01.1990, without reference to the mechanism prescribed in Clauses E1.091, H1.13 (for hire charges) and E1.093, H2.03 (for sale value of non-obligatory materials). The trajectory of the hire- charges recovery, reducing steadily to Rs.100/-

by CC-56 as the work neared completion, only to be shown as Rs.64,969/- in the final bill without supporting particulars, is in line with the contractor's case that the exercise was arbitrary and without any basis. The Board's demand for Rs.2,50,000/- under Ext.A34, unsupported by particulars consistent with the contractual CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 39 2026:KER:76964 mechanism, cannot furnish lawful justification for encashing bank guarantees worth Rs.3,00,000/-.

13.5. It is to be pointed out that DW1 had spoken about the claim made as Relief 'L' where he has inter alia stated that amounts obtained by encashment of bank guarantees, overpayments made etc, do not find a place either in the running account bills or final bill or in the measurement books and that it was separately accounted for in the ledger of accounts branch of the defendants. This contention cannot be accepted as the same is against the established practices concerning billing and works contract, and these aspects were clearly overlooked by the court below.

13.6. The encashment, being arbitrary and contrary to the contractual stipulations governing recovery, cannot be sustained, and the amount is liable to be refunded with interest at 12% per annum (as against 18% originally claimed) from 06.06.1990, the date of encashment, till realisation.

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14. The trial court had categorically found that the evidence of PW1 read with the documents produced before the court clearly showed that there was inaction, delay and breach of condition on the part of the defendants resulting in loss to the plaintiff and that there was no reason to accept the contention of the defendants that there was no breach of condition on their part. The trial court further held from the evidence that the concerned officials had not taken the right decision at the appropriate time regarding the problems pointed out by the plaintiff before them, and the same has caused the delay in execution of the work, including loss to the plaintiff and the Board. Despite holding so, the court below refused to grant most of

the reliefs claimed. The trial court also did not consider the fact that the contractor was all along writing to the Board making its claims, none of which were answered by them.

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15. It is to be noted that where sum becomes due and payable to a contractor, and where the entitlement to the said sum is not in dispute and the Board, without lawful justification, fails to make payment within the time stipulated under the contract or within a reasonable time, the contractor is entitled to reasonable compensation for the period during which it was deprived of the use of the money. The subsequent payment of the principal amount does not extinguish the claim for such compensation. The compensation may ordinarily be quantified by way of interest, and the substance of the claim is not altered merely because it is described as damages or compensation for delayed payment.

16. Law cannot regard the contractor as having suffered no consequences merely because the money was eventually paid. The obligation to pay the principal and the obligation to compensate for the deprivation caused by the delay in discharge of that obligation CNR : KLHC010294252006 RFA NO. 422 OF 2006 & RFA NO. 470 OF 2006 42 2026:KER:76964 are conceptually distinct. The former is discharged when the principal is paid, but the latter survives to the extent of the period during which the contractor was unlawfully deprived of the money. The contractor, therefore, remained deprived of the use of the amount during the period of delay. The contractor has a legitimate claim to be compensated for that delay, whatever nomenclature one might give to his claim in that behalf.

17. [Section 73](#) of the Indian Contract Act, 1872 embodies the general principle that a party suffering from a breach of contract is entitled to compensation for the loss or damage caused to it thereby. When the breach consists of failure to make a monetary payment when it became due, the deprivation of use of that money constitutes the immediate and natural consequence of the breach. Compensation in such cases

cannot be treated as a windfall to the claimant, but a means of recompensing the loss inherent in such deprivation.

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18. In light of the above, RFA No.470 of 2006 filed by the Kerala State Electricity Board and its officials, being confined to Relief 'A', is devoid of merit and is hereby dismissed. RFA No.422 of 2006 filed by the plaintiff-contractor is allowed.

19. The judgment and decree of the trial court dated 05.09.2005 in O.S.No.713 of 1996 shall stand modified as follows:

(a) The decree under Relief 'A' shall carry interest at 12% per annum on Rs.13,67,048.62 from the date of suit (23.09.1996) till realisation, in place of the 6% per annum granted by the trial court.

(b) The plaintiff is granted Relief 'C' and shall be entitled to Rs.7,94,121.90 [as compensation by way of interest at 12% per annum on Rs.26,37,982.53 for the period of delay ending 16.03.1988] along with 12% interest from the date of suit (23.09.1996) till realisation.

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(c) The plaintiff is granted Relief 'D' and shall be entitled to Rs.4,19,437/- [as compensation by way of interest at 12% per annum on Rs.16,34,524/- for the period of delay ending 22.08.1988] along with 12% interest from the date of suit (23.09.1996) till realisation.

(d) The plaintiff is granted Relief 'E' and shall be entitled to Rs.1,56,193.75 [as compensation by way of interest at 12% per annum on Rs.10,23,241/- for the period of delay ending 27.02.1989] along with 12% interest from the date of suit (23.09.1996) till realisation.

(e) The plaintiff is granted Relief 'F', and shall be entitled to Rs.4,71,656.16 [as compensation by way of interest at 12% per annum on Rs.32,97,978.92 for the

period from 01.06.1988 to 09.08.1989] along with 12% interest from the date of suit (23.09.1996) till realisation.

(f) The plaintiff is granted Relief 'L', and is entitled to refund CNR :

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06.06.1990 till realisation.

(g) The decree in all other respects, including as to Reliefs 'B', 'G', 'H', 'I', 'J' and 'K' which are not in appeal, shall stand undisturbed.

RFA No.422/2006 is allowed as above with costs. RFA No.470 of 2006 is dismissed.

Sd/-

MOHAMMED NIAS C.P. JUDGE DMR/-

Judgment reserved	11/08/26
Date of Judgment	07/10/26
Judgment dictated	20/08/26
Draft judgment placed	21/08/26
Judgment corrected	06/10/26
Final judgment uploaded	07/10/26