

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). OF 2026
(@ SLP(C) NO(s). 17823/2023)

THE KERALA WATER AUTHORITY & ORS.

Appellant(s)

VERSUS

T I RAJU & ORS.

Respondent(s)

WITH

CIVIL APPEAL NO(s). OF 2026
(@ SLP(C) NO(s). 24631/2023)

O R D E R

1. Leave granted.
2. The brief facts relevant for determination of the present appeals arising out of the same impugned order dated 23.02.2023 are produced as under:
 - i) The appellant - T.I. Raju in Civil Appeal arising out of SLP (C) No.24631/2023, who is a Government Contractor had entered into a preliminary agreement dated 30.04.2013 for the execution of a work contract pertaining to the construction of Sewage Treatment Plant at Medical College, Calicut with appellant No.1 in Civil Appeal arising out of SLP (C) No.17823/2023.
 - ii) On 07.07.2014, the construction work was completed and the principal sum of Rs.86,64,846/- was due to appellant - T.I. Raju. Thereafter, in 2015, the appellant-T.I. Raju preferred a Writ Petition before the High Court seeking disbursal of the principal sum

due to him, which was allowed and resultantly, the funds were released in his favour by 02.03.2016.

- iii) On 25.11.2017, the appellant-T.I. Raju filed a suit for recovery of interest for delayed payment between the completion of work till the date of disbursal of pending dues, i.e. between 09.07.2014 to 02.03.2016 at the rate of 14% per annum.
- iv) The suit filed by the plaintiff/appellant-T.I. Raju was decreed holding that the defendants/appellants in Civil Appeal @ SLP (C) No17823/2023 are jointly and severally liable to pay a sum of Rs.21,48,411/-, with an interest of 14% from the date of filing the suit till the date of realization.
- v) The High Court partly allowed the appeal filed by the defendant Nos.2, 3 and 7 against the decree for recovery of interest and reduced the rate of interest to 9% per annum, which amounts to a sum of Rs.12,90,469/-.

3. The present issue is one of the payment of interests. Clause (5) of the preliminary agreement dated 30.04.2013 states as under:

"The contractor further assures that it is clearly understood that the settlement of claims either by part bill or by final bills will be made only accordingly to the availability of budget provisions

allotment of funds made with the Divisional Officer in charge of the work under the respective heads of account in which the work is sanctioned and arranged and also subject to the seniority of such bills. No claims or interest for damages whatsoever shall be made for the belated settlement of claims of bill."

4. On a reading of the aforesaid clause, it is clear that at the time when the tender was floated for a public project, a conscious decision was taken to commence the same, notwithstanding the issue pertaining to the availability of necessary funds. For this reason, clause (5) has been introduced at the first place in the preliminary agreement. This clause not only deals with the issue pertaining to the belated payments, but also touches upon the consequential interest which is to be paid in the nature of damages. This is a clause introduced on behalf of the contractor meaning thereby, that the contractor is not only aware of the said clause but he is the one who introduced the same, and hence, he is expected to quote the amount, while being conscious of a situation pertaining to belated payments followed by the consequential interest in the nature of damages.

5. Previously, in the writ petition filed by the

respondent - T. I. Raju, the High Court left the issue of the payment of interest open. Thereafter, the respondent filed the subject suit for recovery of interest on the principal amount. The decree was modified by the High Court in the impugned judgment to the effect of payment of interest at the rate of 9% per annum, on belated payment of the principal sum, and the *pendente lite* interest was reduced to 6% per annum.

6. Though the provision under Section 3(1) of Interest Act, 1978 has been taken note of by the High Court, and the exception contained under Section 3(3) of the Interest Act, 1978 has been ignored. The object of the Interest Act, 1978 is to mandate the payment of interest to the parties in the absence of, or any vacuum in the agreement, or where the interest so fixed is contrary to law, being in the nature of an exorbitant charge.

7. In other words, when the parties have agreed upon by way of a contract executed between them, either to give away the interest so accrued or to receive belated payments, they are indeed governed by the terms mentioned thereunder. Therefore clause (5) of the agreement is settled between the parties and thus binding upon them. There is no question regarding the appellants being in a position to dictate the terms of the same, since clause 5 of the agreement merely shows the nature of the contract entered into.

8. The appellants in Civil Appeal arising out of SLP(C)

No. 17823/2023 fall within the definition of 'State' under Article 12 of the Constitution of India, as the project was undertaken for public purposes. The idea was to initiate the project so that the general public would not suffer due of lack of infrastructure, notwithstanding any delay in the payment. Any profits in favour of the contractor is also a governing factor to the said clause.

9. In our considered view, the High Court did not take into consideration Section 3(3) of the Interest Act, 1978, and thereafter, only read the clause 5 of the preliminary agreement, contextually.

10. Much reliance has been placed by the learned Senior counsel appearing for the respondents on Section 34 of the Code of Civil Procedure, 1908 (for short 'CPC'). Section 34 of the CPC merely speaks about the rate of interest to be applied and, therefore, sub-section (5) cannot be interpreted to have an overriding effect on Section 3(3) of the Interest Act, 1978.

11. Thus, looking from any perspective, we are not in a position to give an imprimatur to the decision of the High Court.

12. In such view of the matter, the impugned order(s) are set aside. Consequently, the appeal filed by the appellants in Civil Appeal arising out of SLP(C)

17823/2023 stands allowed and the appeal filed by the

appellant in Civil Appeal arising out of SLP(C) No. 24631/2023 stands dismissed.

13. Pending application(s), if any, shall stand disposed of.

.....J.
(M. M. SUNDRESH)

.....J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
FEBRUARY 09, 2026

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 17823/2023
[Arising out of impugned final judgment and order dated 23-02-2023
in RFA No. 56/2020 passed by the High Court of Kerala at Ernakulam]

THE KERALA WATER AUTHORITY & ORS.

Petitioner(s)

VERSUS

T I RAJU & ORS.

Respondent(s)

WITH

SLP(C) No. 24631/2023 (XI-B)
(FOR ADMISSION and I.R.)

Date : 09-02-2026 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.M. SUNDRESH
HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH

For Petitioner(s) Mr. Bijo Mathew Joy, AOR
Ms. Gifty Marium Joseph, Adv.

Mr. Thomas. P. Joseph, Sr. Adv.
Mr. M Gireesh Kumar, Adv.
Mr. Ankur S. Kulkarni, AOR
Mr. Sanjay Singh, Adv.
Ms. Sneha Mathew, Adv.

For Respondent(s) Mr. Thomas. P. Joseph, Sr. Adv.
Mr. M. Gireesh Kumar, Adv.
Mr. Ankur S. Kulkarni, AOR
Mr. Sanjay Singh, Adv.
Ms. Sneha Mathew, Adv.

Mr. Bijo Mathew Joy, AOR
Ms. Gifty Marium Joseph, Adv.

Mr. C. K. Sasi, AOR
Ms. Meena K Poulose, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

1. Leave granted.

2. The appeal filed by the appellants in Civil Appeal arising out of SLP(C) No. 17823/2023 stands allowed and the appeal filed by the appellant in Civil Appeal arising out of SLP(C) No. 24631/2023 stands dismissed in terms of the signed order.
3. Pending application(s), if any, shall stand disposed of.

(RADHA SHARMA)
ASTT. REGISTRAR-cum-PS
(Signed order is placed on the file)

(POONAM VAID)
ASSISTANT REGISTRAR