



**DALAM MAHKAMAH RAYUAN MALAYSIA  
(BIDANGKUASA RAYUAN)  
[RAYUAN SIVIL NO: A-02(IM)-2884-11/2011]**

**ANTARA**

**INDAH WATER KONSORTIUM  
SDN BHD** ... **PERAYU**

**DAN**

**BEH PHIAK LAR** ... **RESPONDEN**

**(Dalam Perkara Mengenai Guaman Sivil No. 22-124-2008  
Dalam Mahkamah Tinggi Malaya di Ipoh)**

**ANTARA**

**INDAH WATER KONSORTIUM  
SDN BHD** ... **PLAINTIF**

**DAN**

**BEH PHIAK LAR** ... **DEFENDAN**

**CORAM:**

**ABU SAMAH NORDIN, JCA  
ALIZATUL KHAIR OSMAN KHAIRUDDIN, JCA  
ANANTHAM KASINATHER, JCA**



**ANANTHAM KASINATHER, JCA**  
**DELIVERING JUDGMENT OF THE COURT**

**BACKGROUND FACTS**

1. The appellant is a sewerage service contractor authorized under the Sewerage Services Act 1993 (“the Act”) to provide sewerage services, to demand, collect and retain the sewerage charges for the services so provided. The respondent is the owner / occupier of the house bearing the postal address no. 2414, Taman Samudera Pundut, 32200 Lumut, Perak ('the premise') and which premise is supplied with sewerage services provided by the appellant in the district of Manjung in Perak. It is not seriously disputed that the said premise is and was at all material times connected to the sewerage system operated by the respondent in this district.
2. On 13<sup>th</sup> January 2003, the appellant issued a summons against the respondent claiming the sum of RM1074.00 being the sewerage charges alleged to be due and owing by the respondent as of 30<sup>th</sup> September 2002 in respect of the said premise.



3. By her amended defence dated 10<sup>th</sup> March 2005, the respondent denied liability to pay the sewerage charges on the following grounds:
- a) that in the absence of a contract, the appellant is not entitled to make any claim (**First Issue**);
  - b) that the Sewerage Services (Authorisation of Collection of Charges) Order 1994 is *ultra vires* the Sewerage Services Act 1993 and the same is accordingly invalid and of no legal effect (**Second Issue**);
  - c) that Section 30 (2) of the Sewerage Services Act 1993 ('the Act') is invalid, being *ultra vires* Article 145 (2) of the Federal Constitution (**Third Issue**);
  - d) that the Sewerage Services (Authorisation of Collection of Charges) Order 1994 does not empower the appellant to institute legal action to recover sewerage services charges (**Fourth Issue**);  
and
  - e) that the sewerage service charges demanded of the respondent is not in compliance with the statutory



provisions contained in the Sewerage Services (Charges) Regulations 1994 (**Fifth Issue**).

4. Following the transfer of the case to the High Court in Ipoh, the appellant filed an application for summary Judgment under the rules of court. The application was fixed for hearing on 18<sup>th</sup> January 2011. The Learned Judge dismissed the application on that date citing *inter-alia* points of law which required consideration by way of trial. This appeal is from this decision of the Learned Judge.
5. Before us, Learned Counsel for the Appellant conceded that the statement of defence raised several questions of law. However, learned counsel submitted that to the extent that these questions have already been answered in favour of the appellant in decided cases, the Learned Judge erred in refusing to order summary judgment in its favour. In this respect, learned counsel cited the case of *Malaysian Insurance (M) Sdn Bhd. v. Asia Hotel Sdn Bhd* [1987] CLJ (Rep) 182) as authority for the proposition that a High Court Judge should not refuse to determine a question of law summarily unless the question of law is one of some complexity or the question can only be answered following a finding of fact.



## FIRST ISSUE

6. On the first issue, counsel for the respondent submitted that it is a prerequisite to any right to collect sewerage charges, that there exists a contract between the parties. Counsel for the respondent then relying on the case of *Daymond v. South West Water Authority* [1976] 1 All ER 39 contended that to allow the appellant to demand, collect and retain sewerage service charges as of right would enable the appellant to collect sewerage charges without providing such a service. With respect, the case of *Daymond v. South West Water Authority (supra)* is easily distinguishable because in this case, there was insufficient evidence that the authority seeking to recover the sewerage charges was in fact providing sewerage services to the owner of the premises. To the extent that Section 30(1) of the Water Act 1973 did not authorize the local authority from collecting such charges from a person who was not being supplied with the services, the Water Authorities (Collection of Charges) Order 1976 was held to be *ultra vires* the Act. With respect, our Section 30 (1) of the Sewerage Services Act 1993 expressly provides that the Minister, may by regulations, prescribe that sewerage charges are to be paid “*by any person to whom sewerage services are provided under this Act*”. The premise, in this case, is connected with the sewerage system operated by the respondent. For this reason, the *ratio* of *Daymond v. South West Water Authority (supra)* is not relevant to

the facts of this case. As regards the absence of privity, with respect, the privity on the facts of this case arises by virtue of the appellant being vested through statutory provisions and the agreement with the Government to provide sewerage services to persons such as the respondent (see *Indah Water Konsortium Sdn Bhd v. Yong Kon Fatt* [2007] 4 CLJ 613 at 635). Accordingly, there is no need for a trial to resolve the first issue.

## SECOND ISSUE

7. The validity of the regulations *vis a vis* the parent Act was posed to this Court in the case of *Yong Seng Yeow v. Indah Water Konsortium Sdn Bhd* [2010] 3 CLJ 711. His Lordship Sulaiman Daud JCA (as His Lordship then was) had this to say on the validity of the same regulations:

*“The regulations in question clearly showed that it was made pursuant to the powers conferred by Section 30(1) of the Act. On its plain meaning, we are satisfied that the said Section 30 empowers the Minister to make regulations for the purpose of imposing sewerage charges in cases where sewerage services are provided under the Act. The imposition of the sewerage charges is also consistent with the legislative scheme of the Act as*



*a whole which provide, among others, for the construction of sewerage systems, the management and operation thereof, including the authorization of sewerage services contractor to provide the sewerage services and to collect and retain the sewerage charges in respect thereof. Upon perusal of the regulations as a whole, we are also satisfied that all the provisions therein are within the regulation-making power as provided in Section 30 of the Act”.*

We gratefully adopt the pronouncements of His Lordship as our answer to the submission raised by counsel for the respondent on the second issue.

### **THIRD AND FOURTH ISSUES**

8. Article 145(2) of the Federal Constitution is a provision concerning the duty of the Attorney General (AG) to advise the King or the Cabinet or any Minister on legal matters and perform other duties of a legal character that are assigned to him by the King, or the Cabinet. The AG also discharges functions conferred on him by or under the Federal Constitution or any other written law. Accordingly, there is thus no inconsistency between Section 30 (2) of the Act and Article 145

(2) of the Federal Constitution. As regards the fourth issue, the Act being an Act of Parliament passed by the legislative body in their capacity as law maker, the legislative body may delegate legislative power to the Minister to make orders or regulations for the purposes of the Act. The words in Section 30(2) of the Act are clear and unambiguous. It allows the Minister by an Order published in the gazette, to authorize a sewerage services contractor with whom an agreement has been entered into under Section 7 to demand, collect and retain sewerage charges, fees or levy in respect of sewerage services provided by the sewerage services contractor under the agreement. The appellant is such a licensed sewerage services contractor who had entered into an agreement under Section 7 of the Act. Section 30 (2) clearly enables the Minister to authorize the appellant to demand, collect, and retain sewerage services charges. Additionally, consistent with Section 40 of the Interpretation Acts 1948 and 1967, regulation 11 carries into effect Section 30(2) by expressly authorizing the appellant to recover outstanding sewerage charges. In this respect, we also adopt the reasoning of Sulaiman Daud JCA in upholding the reasonableness of the sewerage charges contained in the regulations (see pages 722 and 723 of the judgment of the Court in *Yong Seng Yeow v. Indah Water Konsortium Sdn Bhd (supra)*).





## FIFTH ISSUE

9. An examination of paragraph 12 (a) of the statement of defence and the relevant paragraphs in the affidavit filed by the respondent in resisting the appellant's application for summary judgment reveals the respondent's claim to the sewerage services charges not being in compliance with the 1994 regulations to be nothing but bald assertions with no particulars whatsoever. In our judgment, the pronouncements of Sulaiman Daud JCA in the case of *Yong Seng Yeow v. Indah Water Konsortium Sdn Bhd (supra)* upholding the reasonableness of the charges including the formula for determining the charges contained in the regulations, provides the answer to the submission of counsel for the respondent on this issue.

## CONCLUSION

10. We agree with the submission of the counsel for the appellant that the five issues raised by the respondent are legal in nature and to the extent that these legal issues have already been resolved in earlier decided cases, these issues are neither contentious nor complex so as to warrant a trial of the same. Accordingly, we allowed this appeal and entered judgment for the appellant in the amount prayed for in the summons in



chambers for summary judgment. We set aside the order of the Learned Judge of the High Court. The judgment of the Court in terms of prayer (1) of the summons of chambers is to carry interest at the rate of 4% p.a. The respondent was ordered to pay costs of RM3,000 to the appellant being costs here and below.

**(ANANTHAM KASINATHER)**  
JUDGE  
COURT OF APPEAL MALAYSIA  
PUTRAJAYA

**Date of decision:** 8 MARCH 2012

**Dated this:** 8 JANUARY 2013



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**Case(s) referred to:**

*Malaysian Insurance (M) Sdn Bhd v. Asia Hotel Sdn Bhd [1987] CLJ (Rep) 182*

*Daymond v. South West Water Authority [1976] 1 All ER 39*

*Indah Water Konsortium Sdn Bhd v. Yong Kon Fatt [2007] 4 CLJ 613*

*Yong Seng Yeow v. Indah Water Konsortium Sdn Bhd [2010] 3 CLJ 711*