

'Khir and PM had advised Syabas to uphold deal'
Malaysiakini.com
Disember 17, 2010

A company suing two water utility companies and the Selangor government for breach of contract said that it has raised its concerns with then-Selangor Menteri Besar Dr Mohd Khir Toyo and the Prime Minister's Office back in 2006.

The plaintiff, JAKS Resources Bhd, claims that the defendants had breached its contract by sourcing pipes and fittings from Indonesia, instead of from them.

The defendants are Perbadanan Urus Air Selangor (Puas), Syarikat Air Selangor Bhd (Syabas) and the Selangor government.

NONEJAKS Resources Bhd group general manager Chee Seong Heng (right) told the Kuala Lumpur High Court today that both Khir and the prime minister had submitted a letter of acknowledgement to the company on its complaints.

He said that both parties had advised Puas and Syabas to abide by the 10 year agreement that the state had signed in October 2001 with JAKS Resources Bhd's subsidiary JAKS-KDEB Consortium Sdn Bhd.

"The Selangor government, through the menteri besar's letter dated March 22, 2006, was clearly against Syabas' conduct and instead had expressly stated that the supply agreement must be adhered to for its entire duration.

"The federal government's view from this document is that Syabas should honour the supply agreement as seen in the secretary to the prime minister's letter to the finance minister II dated March 28, 2005," said Chee.

'Deliberate attempt to injure plaintiff'

Chee said that however, due to Syabas' total control of Puas, no orders were placed by Puas to the JAKS-KDEB.

NONE"Such conduct was directed to injure the plaintiff and resulted in losses," he said to questions from counsel David Hoh.

Under the agreement JAKS-KDEB was tasked by the Selangor government to supply pipes and fittings for the areas covering Selangor, Kuala Lumpur and Putrajaya.

As of 2005, the defendants did not place any orders with JAKS-KDEB.

JAKS-KDEB, in which the Selangor government has a 30 percent stake through its investment arm Kumpulan Darul Ehsan Bhd, has alleged that PUAS and Syabas had obtained its supply of pipes and fittings from elsewhere, including from Indonesia. Previously, Puas and Syabas were represented by Zaki Azmi, who is now the Chief Justice. Currently, the two companies are represented by Steven Thiru and David Matthews while the Selangor government is represented by assistant Selangor state legal advisor Md Azhari Abu Hanit.

30-year concession agreement

When JAKS-KDEB initiated the suit in 2006, it obtained an injunction preventing Puas and Syabas from obtaining their supply of pipes and fittings from other sources.

syabas logoIn 2001, the Selangor government through its Selangor Water Department had entered an agreement with JAKS-KDEB, among others, while purchasing water works projects worth RM101.895 million.

The Selangor Water Department was later corporatised and became known as Puas in 2002. Under a state gazette, all properties, rights or liabilities of the state government with regard to water supply is transferred retrospectively to Puas.

Sometime on Dec 15, 2004, Syabas acquired Puas, where Syabas, the Selangor government and the federal government entered into a concession agreement to supply and distribute treated water to consumers within the distribution area for a period of 30 years until Dec 31, 2034.

The shareholders of Syabas comprise Puncak Niaga Holdings Bhd (70 percent), KDEB (30 percent) and Minister of Finance Incorporated (1 golden share). Puas and Syabas possess three common directors namely Rozali Ismail, Ruslan Hassan and Mat Hairi Ismail.

Rozali, who is Syabas executive chairperson and Hulu Selangor Umno division treasurer, holds direct and indirect control of parent company Puncak Niaga Holdings Bhd through a 41.46 percent shareholding.

Chee: Agreement not cancelled

During cross-examination by Thiru, Chee said despite the change in status from the Selangor Water Department to Puas and then Syabas, the Selangor government did not cancel its agreement with JAKS-KDEB.

The witness said he does not know where Puas and Syabas obtained their supply of pipes and fittings but JAKS-KDEB managed to obtain an injunction.

"The supply agreement is still valid and it is incumbent on the defendants to abide by it," he said.

It is Puas' and Syabas' contention that the Selangor government alone should be liable for the action.

Hearing continues before Justice Hasnah Mohammed Hashim on Jan 21, with continued cross-examination.