

## IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

## O N A P P E A L

## FROM THE FEDERAL COURT OF MALAYSIA

## B E T W E E N :

WONG AH SUAN

Appellant

- and -

SARAWAK ELECTRICITY  
SUPPLY CORPORATIONRespondent

- and -

10 THE GOVERNMENT OF THE  
STATE OF SARAWAKRespondent

## CASE FOR THE SECOND RESPONDENT

1. This is an Appeal from a Judgment dated the 6th July 1979 of the Federal Court of Malaysia (Lee Hun Hoe C.J. Borneo, Chang Min Tat, F.J. and Salleh Abas F.J.) allowing an Appeal from a judgment of George K.S. Seah J in the High Court of Borneo on the 14th December 1978 in favour of the Plaintiff, who is the Appellant in these proceedings.

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20 2. The claim of the Appellant in his Action against the First Respondent (Civil Suit No. K 341 of 1976) was for a declaration that the First Respondent was precluded by the terms of section 4 of the Electricity Ordinance and/or section 15 of the Sarawak Electricity Supply Ordinance, 1962 from using working or operating any installation for the supply of electricity to that part of Saratok, Sarawak defined in the First Schedule of a Licence dated 20th January 1961, granted by the Governor and Commander-in-Chief of Sarawak to the Appellant pursuant to section 4 of

30 such Electricity Ordinance, secondly for an injunction to restrain the First Respondent by its servants, agents, or otherwise from supplying such electricity to the part of Saratok covered by such Licence in favour of the Appellant,

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and also damages and costs.

- P. 14      3.      In his Amended Statement of Claim against the Second Respondent (Civil Suit No. K380 of 1976) the Appellant sought declarations that the actions of the Governor-in-Council purporting to dispense with the consent of the Appellant to the First Respondent supplying electricity to any consumer in the area covered by the Appellant's Licence and the act of the Governor in granting a licence dated 10th May 1974 to the First Respondent to supply energy and light, within the exclusive area granted to the Appellant under the said Licence dated 20th January 1961 were ultra vires and void. 10
- P. 19      4.      By its Defence the Second Respondent contended inter alia that the said Licence granted to the Appellant was no longer in force, that the licence dated 10th May 1974 was granted to the First Respondent pursuant to the provisions of section 4 of the Electricity Ordinance (Cap 137) Sarawak after dispensation by the Governor in council of the need for consent by the Appellant in accordance with the provisions of section 15 of the Sarawak Electricity Supply Corporation Ordinance 1962, and that the said actions by the Governor in Council were in accordance with law and valid, that the dispensation of consent of the Appellant was a matter wholly within the competence and discretion of the Governor in Council and was not justiciable in a court of law. 20
- P. 21      5.      By Order of the Acting Senior Assistant Registrar of the High Court in Borneo dated the 13th March 1978 Civil Suit K 380 of 1976 was consolidated with Action K 341 of 1976. 30
- P. 120      6.      The said consolidated actions were tried by Mr. Justice George K.S. Seah in the High Court of Borneo in Kuching on the 9th, 10th, 11th, 12th and 13th May 1978, and on the 8th, 9th and 30th June 1978, who on 14th December 1978 gave judgment in favour of the Appellant in each of the said actions, and adjudged and declared that the action of the Governor-in-Council purporting to dispense with the consent of the Plaintiff under the proviso to section 15(2) of the Sarawak Electricity Supply Corporation Ordinance was null and void; that the action of the Governor of Sarawak in granting the sixth supplemental electricity licence dated 10th May 1974 to the First Respondent to supply electricity to persons within the area of Saratok designated by the Licence dated 20th January 1961 granted to the Appellant was null and void; and that the 40

First Respondent was precluded by section 15 of the Sarawak Electricity Supply Corporation Ordinance, 1962 from using, working, or operating any installation for the supply of electricity within such area, but refused to grant an injunction restraining the First Respondent from supplying electricity in such area, holding that damages would provide an adequate remedy.

7. The First Respondent by Notice of Appeal dated P. 164

10 28th December 1978 appealed against the whole of the said decision and the Second Respondent by Notice of Appeal dated 12th January 1979 appealed against so much P. 169

of the said judgment as decided that the action of the Governor in Council purporting to dispense with the consent of the Appellant under the proviso to section 15(2) of the Sarawak Electricity Supply Corporation Ordinance was null and void, and that the act of the Governor of Sarawak in granting the sixth supplemental electricity licence dated 10th May 1974 to the First Respondent to supply electricity in so far as it purported to permit such supply within the said area designated under the Appellant's said Licence was null and void.

8. The said appeals were heard by the Federal Court of Malaysia at Kuching (Lee Hun Hoe C.J. Borneo, Chang Min Tat F.J. and Salleh Abas F.J.) on 24th and 25th April 1979, which by a unanimous judgment given on 6th July 1979 allowed both the said appeals and dismissed the P. 173

30 claims of the Appellant in both actions with costs both in such Federal Court and in the High Court in Borneo. From the said judgment the Appellant now appeals to Her Majesty in Council.

9. The brief facts upon which the Second Respondent will rely are that on 20th January 1961 the Governor and Commander-in-Chief of Sarawak granted a sole and exclusive P. 191

40 licence to the Appellant under the Sarawak Electricity Ordinance (Cap 137) to supply electricity within an area in the township of Saratok designated in the First Schedule to such Licence for a period of twenty five years expiring on 31st December 1985 and thereafter for further periods of five years unless and until the same were to be determined by either party as therein provided.

10. Following the granting of the licence, the Plaintiff installed a generating plant, erected and maintained the requisite lines and apparatus and began to supply electricity to consumers in Saratok and formed a firm called M. Swann Electricity Supply, Saratok, to look after his interests in connection therewith. Although the licence was silent as to who should bear the cost, initially the plaintiff received

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some form of Government subsidy to facilitate the installation.

11. On June 10, 1970 a fire destroyed a substantial part of Saratok Bazaar, causing considerable loss and hardship to shopkeepers there. To ameliorate their position temporary shops were constructed in the bazaar, but complaints were made by some shopkeepers that the Plaintiff had tried to exploit his monopoly by unjustifiably increasing the wiring, lighting point, and connection fee charges. After the completion of the temporary structures a few shops continued to use electricity supplied by the Plaintiff while the rest made do with pressure lamps. Soon after the fire, the Borneo Development Corporation Bhd. constructed some 61 shops in the new Saratok bazaar, some distance from the old one. 10

P. 204 12. On October 19th, 1971 the Governor of Sarawak issued the Plaintiff with a Supplemental Electricity Licence which entitled the Plaintiff to raise the rates of charges. 20

13. On January 2nd, 1972 the Plaintiff announced that new revised tariff rates would take effect on February 1, 1972.

14. Clause 7(a) of the Licence set out the maximum charges which the Plaintiff was entitled to demand for electricity supplied by him, which could not be increased without leave from the Government. These charges were adopted and enforced by the Plaintiff, who thereby occasioned considerable discontent in Saratok as the rates so charged by the Plaintiff were in excess of those prevailing elsewhere in the State of Sarawak. 30

P. 213 15. On May 2, 1972 the Chief Electrical Inspector, Sarawak sent a letter to the Plaintiff inquiring whether in view of the Government Rural Electrification programme, he would be willing to surrender the licence voluntarily before its expiry date on December 31, 1985. P. 214 The Plaintiff replied on May 24, 1972 stating that he would be prepared to do so on payment by the government of the sum of \$4,000,000.00. On 19th June 1972 the Chief Electrical Inspector replied stating that the P. 214 Government did not presently intend to take over the supply of electricity to Saratok. 40

16. The Plaintiff's high supply and installation charges led to a series of petitions by the people of Saratok to the Government to take over the supply of electricity in

that town. Thus on 30th December 1972 many Saratok firms sent a petition to the Deputy Chief Minister complaining of the Plaintiff's charges, monopoly position, and inferior service, and inviting the Government to take over the Saratok electricity supply as the continuance of such monopoly was entirely contrary to the Government's policy of providing cheaper subsidized electricity supplies to rural areas. On 28th February 1973 a meeting was held at which consumers' representatives to deal and negotiate with the Government were appointed. On 5th, 8th and 13th March 1973 further petitions along similar lines were sent by such representatives and other interested persons inviting the Deputy Chief Minister to ask the First Respondents to undertake the supply of electricity in Saratok.

17. On 14th March 1973 the said community representatives applied formally to the First Respondents asking them to undertake such supply; and on 5th May 1973 a considerable number of Saratok residents in a letter to the First Respondents endorsed their representatives' stance. In each case copies of such letters and petitions were sent both to the Deputy Chief Minister and to other government officials.

18. On 23rd January 1973 and 19th February 1973 many of the Saratok firms wrote to the Plaintiff saying that they would boycott his services with effect from 1st March 1973, and copies of the earlier letter were widely circulated to the Government and its officials, including the General Manager of the First Respondents, the Sarawak Electricity Supply Corporation, which had been established under an Ordinance No. 25 of 1962 (hereinafter called "the SESCO Ordinance") by which the First Respondents were charged, inter alia, with the duty of promoting and encouraging the generation of electricity to further the economic development of Sarawak and to secure the supply of energy at reasonable prices.

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19. On 20th February 1973 the Plaintiff wrote in reply to the Saratok bazaar shopkeepers pointing out that the charges made by his firm were in accordance with the tariff authorized by the said supplemental licence with effect from 19th October 1971 and answering the complaints as to the quality of the service provided.

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20. On 17th March 1973 the First Respondents' general manager wrote to the Plaintiff's firm proposing a meeting with the Plaintiff, and inquiring whether the Plaintiffs as a result of the general dissatisfaction of the people of Saratok with the service provided by him would be prepared to allow

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the First Respondents to take over all his consumers so that they could provide an economically viable service for the area. Shortly afterwards a meeting took place between the Plaintiff and the First Respondent's general manager at which the latter recollected that the possibility of the Plaintiff relinquishing his licence to enable the first Respondents to go into Saratok was discussed but turned down by the Plaintiff.

- P. 322                      21.      On 17th April 1973 as part of the sustained                      10  
campaign to transfer the supply of electricity for Saratok into the hands of the First Respondents many residents wrote to the Governor of Sarawak to the like effect.
22.      On 23rd July 1973 the Ministry of Communications and Works wrote to the Plaintiff's firm stating that it had introduced new and substantially reduced tariff rates applicable to public electricity suppliers except the First Respondents.
- P. 333                      23.      Shortly afterwards on 1st August 1973 the First                      20  
Respondents' general manager wrote to the Plaintiff asking him to give his consent to their supplying electricity to persons in Saratok who had asked them to do so. The First Respondents sought such consent within a week failing which it would be presumed that the Plaintiff was not willing to agree to their so doing.
- P. 216                      24.      On 7th August 1973 the Plaintiff's legal advisers                      30  
replied to the Ministry that the Plaintiff was not prepared to accept the revised tariff rates which were in contravention of those authorized by the supplementary licence, and complaining that the Government and the First Respondents appeared to be trying to make it impossible for the Plaintiff to continue supplying electricity in accordance with his licence, and seeking the withdrawal of the letter of 23rd July 1973. On 13th August 1973 the Ministry refused to withdraw its said letter, repeated its request for the Plaintiff's co-operation in implementing the new tariff and stated that if the Plaintiff was not in a position to comply with the new tariff he should so advise the Ministry.                      40
- P. 218
- P. 224                      25.      On 8th August 1973 the Plaintiff's lawyers replied to the First Respondents' letter of 1st August 1973 stating that the Plaintiff was and had been, able and willing to supply the requisite energy on reasonable terms and within reasonable time and that, therefore, he was not prepared to give the consent sought by the

First Respondents and requesting them not to do anything that would either directly or indirectly make it difficult for the Plaintiff to continue supplying electricity in accordance with the licence and supplementary licence granted to him, and further contending that the Government was acting unreasonably and illegally in purportedly introducing new tariff rates when the rates considered reasonable and authorized by the Governor in 1971 were still reasonable.

10      26.      On 8th September 1973 the general manager of the First Respondents replied to the Plaintiff's said letter dated 8th August 1973 informing him that the electrical supply application from the Saratok people had been considered by the Corporation and that the Saratok applicants had been informed as to the rate, terms and conditions upon which the First Respondents would supply electricity, and adding that the First Respondents were under a legal obligation to provide electricity to such applicants. P. 225

20      27.      In the meantime on 11th August 1973 the First Respondents wrote to the Permanent Secretary of the Ministry of Communications and Works requesting that a dispensation of consent from the Plaintiff be obtained from the Governor-in-Council under section 15(2) of the S.E.S.C.O. Ordinance, supported by copies of all petitions so far received. P. 272

30      28.      On 27th September 1973 the Supreme Council of the Government, after considering the matter proposed to the Ministry of Communications and Works that a solution to the problem would be for the Plaintiff and the First Respondents to supply electricity to Saratok as a joint venture. This proposal was communicated to the Ministry who on 6th October 1973 wrote to the First Respondents suggesting such joint venture as a compromise and that the First Respondents should improve such electricity supply with a view to taking over the sole responsibility for it on the expiration of the Plaintiff's licence. The first Respondents considered these proposals but turned them down in favour of taking over the supply of electricity in Saratok district exclusively. Since the said proposal was turned down by the First Respondents it was not submitted to the Plaintiff. P. 273

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29.      On 22nd November 1973 the Supreme Council again considered the position and decided that if the proposed joint venture was unworkable, the First Respondents should proceed under section 15(2) of the S.E.S.C.O. Ordinance.

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30. On 13th December 1973 the Supreme Council was informed that the First Respondents did consider the joint venture proposal to be unworkable and recommended to the Governor that he would dispense with the consent of the Plaintiff under section 15(2) aforesaid. This decision was confirmed at a further meeting of the Supreme Council held on 24th December 1973. On 27th December 1973 the Governor-in-Council accordingly dispensed with the consent of the Plaintiff to enable the First Respondents to comply with their obligations under section 15(1) of the S.E.S.C.O. Ordinance. Although formal notification of such decision by the Governor-in-Council was not given to the First Respondents until 11th November 1975 a sixth supplemental licence was granted to them on 10th May 1974 which enabled them to undertake the supply of electricity in the Saratok area covered by the licence to the Plaintiff and the same was sent to the First Respondents on 16th May 1974. It was expressly provided by such supplemental licence that the same was to take effect from 1st June 1974. 10
- P. 273
31. Relying on the sixth supplemental electricity licence the First Respondents began to supply electricity to consumers in Saratok in November 1975 including areas covered by the Appellant's licence. On 3rd November 1975 the Appellant's advocates protested against the breach by the First Respondents of the Appellant's exclusive licence and demanded that they should cease supplying electricity to that part of Saratok within the area covered by the same. In reply the First Respondents by letter from their advocates dated 19th November 1975 alleged that since the Appellant had unreasonably refused or withheld his consent to allow them to supply electricity to the area concerned, pursuant to section 15 of the SESCO Ordinance 1962 they had obtained dispensation of the consent of the Appellant and refused to cease operation as demanded. 30
- P. 226
- P. 235
32. On 14th July 1976 fresh advocates for the Appellant wrote to the Government of Sarawak demanding that the First Respondents should cease supplying electricity in breach of the Appellant's licence and stating that he had at all times been ready and willing to supply the same. 40
- P. 227
33. The Ministry of Communications and Works replied on 19th July 1976 stating that the First Respondents had all the statutory powers under the SESCO Ordinance to provide electricity whenever it was required and were
- P. 228



obliged, under the Ordinance, to comply with the provisions thereof and, that it was not correct to say that the Ministry had allowed the First Respondents to supply electricity to Saratok. The Ministry could not interfere where the First Respondents had acted in compliance with the provisions of such Ordinance.

34. In the result on 24th August 1976 the Appellant commenced the said proceedings against the First Respondents in the High Court in Borneo Kuching Registry (Civil Suit No. K341 of 1976) and on 24th September 1976 commenced the said further Action in the same Court against the Second Respondent (Civil Suit No. K380 of 1976).

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35. Section 4 of the Sarawak Electricity Ordinance (Cap 137), under the power of which the Appellant's said Licence was issued by the Governor of Sarawak on 20th January 1961 provides:-

4. - (1) Subject to subsection (5) and to such exceptions as may be prescribed, no person shall ;

(a) use, work or operate, or permit to be used, worked or operated, any installation; or

(b) supply to or for the use of any other person energy from any installation,

except under and in accordance with the terms of a licence issued under this section authorizing such use or supply, as the case may be.

(2) Licences under this section may, without prejudice to the provisions of section 36, be granted by the (Governor) for such periods, under such conditions and with such stipulations as to the exclusive nature thereof or otherwise and generally in such manner as the (Governor) may deem fit....

(4) The period of duration of every licence shall be set out therein and, in every licence which permits the supply of energy to any person other than the licensee, there shall be set out -

(a) the area of supply;

(b) the declared voltage and the variations permitted thereon;

(c) the maximum charges payable by consumers;

and

(d) such other matters as the  
(Governor) may consider desirable....

(6) The (Governor) shall, prior to the issue of a licence under this section, seek the advice of the Sarawak Electricity Supply Corporation.

36. The Sarawak Electricity Supply Corporation Ordinance (No. 25 of 1962) under which the First Respondents were established provided, inter alia:-

14. - (1) Subject as hereinafter provided, it shall be the duty of the Corporation - 10

(a) to manage and work the electrical installations transferred to the Corporation by this Ordinance, and such other installations and apparatus as may be acquired by the Corporation under the provisions of this Ordinance;

(b) to establish, manage and work such electrical installations as the Corporation may deem it expedient to establish; 20

(c) to promote and encourage the generation of energy with a view to the economic development of Sarawak;

(d) to secure the supply of energy at reasonable prices;

(e) to advise on all matters relating to the generation, transmission, distribution and use of energy.

15. - (1) Subject to the provisions of subsection 2, in so far as it is able to do so, the Corporation shall supply energy to any person, other than a licensee, requiring a supply of energy (in this section referred to as a consumer), if such consumer undertakes to enter into a contract with the Corporation, giving such security as the Corporation may require to take, or continue to receive, and to pay for a supply of energy upon such terms and conditions as the Corporation may determine. 30

(2) The Corporation shall not supply energy 40

to a consumer, other than the licensee, in any area which for the time being forms part of the area of supply of a licensee, except with the consent of such licensee:

Provided where the consent of a licensee is required under this subsection and such licensee refuses or withholds such consent, the Corporation may appeal to the Governor-in-Council, and the Governor-in-Council, if satisfied that the consent of such licensee is unreasonably refused or withheld, may dispense with such consent.

(3) For the purposes of this proviso to subsection 2, consent shall be deemed to be unreasonably refused or withheld if the licensee is not willing and able to supply the requisite energy upon reasonable terms and within a reasonable time, having regard, amongst other things, to the terms upon, and the time within, which the Corporation is willing and able to supply such energy.

37. Article 5 of the Constitution of the State of Sarawak which came into effect on 6th September 1963 provides:-

"The executive authority of the State shall be vested in the (Governor) but executive functions may by law be conferred on other persons."

38. Article 10 of such Constitution provides:-

10. - (1) In the exercise of his functions under this Constitution or any other law, or as a member of the Conference of Rulers, the (Governor) shall act in accordance with the advice of the (Supreme Council) or of a member thereof acting under the general authority of the Council, except as otherwise provided by the Federal Constitution or this Constitution; but shall be entitled, at his request, to any information concerning the government of the State which is available to the (Supreme Council).

(2) The (Governor) may act in his discretion in the performance of the following functions -

(a) the appointment of a Chief Minister;

(b) the withholding of consent to a request for the dissolution of the (Council Negri.)

(3) The Legislature may by law make provision

for requiring the (Governor) to act after consultation with, or on the recommendation of any person or body of persons other than the (Supreme Council) in the exercise of any of his functions except -

(a) functions, exercisable in his discretion; and

(b) functions with respect to the exercise of which provision is made in the Federal Constitution or any other Article 10 of this Constitution.

39. By Section 14(1)(c) of the S.E.S.C.O. Ordinance the First Respondents were charged, inter alia, with the duty of promoting and encouraging the generation of electricity with a view to the economic development of Sarawak and by section 14(1)(d) were enjoined to supply energy at reasonable prices.

40. The Second Respondent relies upon the proviso to sub-section 15(2) of the S.E.S.C.O. Ordinance on the ground that the First Respondent had sought and failed to obtain the consent of the Appellant to its supplying electricity to that part of Saratok covered by his licence and that in the circumstances of this case the Governor-in-Council being satisfied that such consent had been unreasonably refused or withheld was empowered to dispense with the same. 20

41. In support of the contention by the Second Respondent that the Governor-in-Council in exercising his discretion and dispensing with the Appellant's consent pursuant to sub-section 15(2) of the S.E.S.C.O. Ordinance, the Governor-in-Council was sufficiently apprised of the position of both the Appellant and the First Respondents and of the circumstances and facts and matters relating to the supply of electricity to Saratok, including the extreme dissatisfaction of many of the consumers in that area with the Appellant's charges and with the quality of the service provided by him, and was aware of the attitude taken by the Appellant's legal advisers both as to the proposed reduced electricity tariff and to the request of the First Respondents for his consent to supply electricity to consumers in Saratok, the Second Respondents will rely upon the following, among other matters:- 30 40

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(a) on 2nd May 1972 the Appellant had been asked by the Chief Electrical Inspector for

Sarawak whether in view of the Government's rural electrification programme he would be willing to surrender his licence voluntarily before its expiry date and had replied that he would be so willing on payment of \$400,000/-.

10 (b) By March 1973, if not before, the Appellant had been made aware of the growing discontent amongst the electricity 'consumers' of Saratok by their said letters advising him of the boycott of his supplies due to the high prices charged by him and the lack of reliability of the service which he provided. Shortly after 17th March 1973 the Appellant had a meeting with the First Respondents' general manager at which the possibility of the Appellant relinquishing his said licence to enable the First Respondents to supply electricity to Saratok was further discussed.

20 (c) When on 23rd July 1973 the Appellant was notified by the Ministry of Communications and Works for Sarawak that a new and reduced electricity tariff was to be introduced the Appellant, by his solicitors refused to accept the new rates and protested against them.

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30 (d) On 1st August 1973 the Appellant was formally asked by the First Respondents under section 15(2) of the S.E.S.C.O. Ordinance to give his consent to their being allowed to move into Saratok to supply electricity there, the First Respondents having received more than 60 applications from persons in Saratok inviting them to do so. The Appellant, by his solicitors, on 8th August 1973 claimed that he was and had been able and willing to supply the requisite electricity upon reasonable terms and within reasonable time and claimed that the Government was acting unreasonably and illegally in purportedly introducing the said new tariff, alleging that the previously authorised rates were still reasonable.

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P. 224

40 (e) The willingness of the First Respondents to supply electricity to those who wanted it in Saratok at its stated rates would have involved them in a loss, by reason of the limited nature of the demand from those who had boycotted the Appellant, a loss which they were prepared to bear in discharge of their duty under the S.E.S.C.O. Ordinance. There was no evidence to show that the Appellant would have incurred a similar loss by supplying electricity in Saratok at the rates prescribed by the said revised

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tariff. The Appellant at no time advanced any matters in support of his contention that he was willing and able to supply electricity upon reasonable terms save for his reliance upon the rates contained in the said supplemental licence dated 19th October 1971.

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(f) On 11th August 1973 the First Respondents had formally requested that the Governor-in-Council should dispense with the Appellant's said consent under section 15(2) of the S.E.S.C.O. Ordinance. 10

(g) The Ministry of Communications and Works before proposing to the Governor-in-Council that such consent by the Appellant should be dispensed with canvassed with the First Respondents the said proposal that the Appellant and the First Respondents should supply electricity to Saratok as a joint venture, and only resiled from such proposal on the refusal of the First Respondents to agree to the same. 20

(h) On deciding to proceed under section 15(2) of such Ordinance the Supreme Council gave no oral hearing to either the Appellant or the First Respondents and did not invite further representations from either, the attitude of the Appellant having been made plain by his solicitors' letters to the Respondents.

(i) It is not suggested by the Appellant that the Governor-in-Council has in any way acted in bad faith or shown bias. 30

The Second Respondent respectfully submits that the Judgment of the Federal Court of Malaysia in the exercise of its Appellate Jurisdiction was right and ought to be affirmed and that this Appeal should be dismissed with costs for the following (amongst other)

### R E A S O N S

- (1) BECAUSE by virtue of the provisions of sub-sections 14(1)(c), 14(1)(d) and 15(1) of the S.E.S.C.O. Ordinance the First Respondents were under a duty to promote and encourage the economic development of Sarawak by supplying electricity to rural areas at reasonable prices; 40
- (2) BECAUSE the proviso to sub-section 15(2) of

such Ordinance empowered the Governor-in-Council, when satisfied that the consent of a holder of an exclusive licence to supply electricity to the First Respondents supplying electricity within his territory had been unreasonably refused or withheld, to dispense with such consent.

10 (3) BECAUSE the facts and circumstances leading to the Governor-in-Council dispensing with the consent of the Appellant to the First Respondents supplying electricity to that part of Saratok covered by his licence were such as to satisfy the requirements of the proviso to sub-section 15(2) of the S.E.S.C.O. Ordinance.

20 (4) BECAUSE there is no obligation in the S.E.S.C.O. Ordinance and in particular in section 15 thereof for notice of the application to dispense with the consent of the Appellant to be given to him, nor is it there provided that the Appellant should be informed of the grounds upon which the said application is to be made.

(5) BECAUSE the procedure set out in Section 15 of the S.E.S.C.O. Ordinance for dispensing with the consent of the Appellant was complied with and there is no room for any implied term in the said section 15 that the Appellant should be entitled to make any representations to the Governor-in-Council with regard to the said application either orally or in writing or at all.

30 (6) BECAUSE the facts and circumstances under which the Governor-in-Council dispensed with the Appellant's said consent were such as to enable the Governor-in-Council to be satisfied that the Appellant's consent had been unreasonably refused or withheld and that his reasons for so doing had been put before him and that there was no evidence to show that in exercising the discretion conferred upon him by the S.E.S.C.O. Ordinance the Governor-in-Council did not consider the matter fairly and in good faith and without bias.

40 (7) BECAUSE the question for determination by the Governor-in-Council under section 15(2) and sub-section 15(3) of the S.E.S.C.O. Ordinance was not whether any charges had been made against the Appellant to which he should have been given the opportunity of making a reply, but whether the Applicant was or was not willing and able to supply the required electricity on reasonable terms and within a reasonable time,

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having regard, inter alia, to the terms upon which and the time within which the First Respondents were willing and able to supply the same, and the Governor-in-Council by the Minister of Communications and Works was already aware by the representations made by the Appellant's solicitors of his assertion of his rights, namely that he held a sole and exclusive licence to supply electricity for a determinate and irreducible term ending on 31st December 1985 to the area therein defined, that by such licence and by the said supplemental licence dated 19th October 1971 the Appellant was allowed to charge consumers of electricity supplied by him according to the tariff therein set out, that he had done just that, that such charges which had last been revised in October 1971 were still reasonable and he was not prepared either to reduce them or to give his consent to the First Respondents supplying electricity to consumers within the area designated by such licence. 10 20

(8) BECAUSE in the premises the Governor-in-Council had all the material before him on which to come to a fair and proper decision, since subsection 15(3) lays down an objective test and the Appellant was not willing to supply electricity upon the terms which the First Respondents were both willing and able to do, then the deeming provision took effect so empowering the Governor-in-Council to dispense with the Appellant's said consent. 30

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(9) BECAUSE of the other reasons set out in the unanimous judgment of the Federal Court of Malaysia exercising its Appellate Jurisdiction.

DONALD FARQUHARSON Q.C.

MICHAEL GETTLESON



IN THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL

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O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

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B E T W E E N :

WONG AH SUAN Appellant

- and -

SARAWAK ELECTRICITY  
SUPPLY CORPORATION Respondent

- and -

THE GOVERNMENT OF  
THE STATE OF SARAWAK Respondent

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CASE FOR THE SECOND RESPONDENT

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