

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

WP(C) .No. 4251 of 2015 (F)

PETITIONER(S) :

ABDUL BASHEER PUTHUPPADY,
AGED 41 YEARS,
S/O.UMMINIKUNNUMMEL ALIKUTTI HAJI, PROPRIETOR,
M/S.U K PETROLEUM, BHARAT PETROLEUM DEALERS,
POONOR TOWN, UNNIKULAM P.O., KOZHIKODE DIST-673 574.

BY ADVS.SRI.SANTHARAM P.,
SMT.REKHA ARAVIND &
SMT.T.S.REMYA.

RESPONDENT(S) :

-
1. BHARAT PETROLEUM CORPORATION,
REPRESENTED BY ITS ATTORNEY HAVING ITS REGISTERED
OFFICE AT BHARAT BHAVAN 4 & 6 CURRIM BHAI ROAD,
BALLARD ESTATE, P B NO 688, MUMBAI-400 001.
 2. TERRITORY MANAGER(RETAIL) ,
BHARAT PETROLEUM CORPORATION,
CALICUT TERRITORY OFFICE, 3RD FLOOR, CEEKEY TOWERS,
VANDIPETTA, KANNUR ROAD, NADAKKAVU WEST,
KOZHIKODE-673 011.

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
BY ADV. SRI.P.GOPINATH
BY ADV. SRI.P.BENNY THOMAS
BY ADV. SRI.K.JOHN MATHAI
BY ADV. SRI.JOSON MANAVALAN
BY ADV. SRI.KURRYAN THOMAS.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 28-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT. P1:- TRUE COPY OF THE DISPENSING PUMP AND SELLING LICENSE DTD 1/3/2005.
- EXT. P2:- TRUE COPY OF THE LEASE AGREEMENT DTD 5/7/2007.
- EXT. P3:- TRUE COPY OF THE AGREEMENT FOR SALE DTD 30/3/2010.
- EXT. P4:- TRUE COPY OF THE AGREEMENT FOR SALE DTD 4/9/2012.
- EXT. P5:- TRUE COPY OF THE LETTER DTD 25/3/2013.
- EXT. P6:- TRUE COPY OF THE LETTER DTD 30/8/2013.
- EXT. P7:- TRUE COPY OF THE COMMUNICATION DTD 30/9/2013 ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT.
- EXT. P8:- TRUE COPY OF NOTICE ISSUED BY THE RESPONDENT DTD 26/8/2013.
- EXT. P8(A):- TRUE COPY OF NOTICE ISSUED BY THE RESPONDENT DTD 4/3/2014.
- EXT. P9:- TRUE COPY OF REPLY DTD 30/8/2013 SENT TO THE RESPONDENT.
- EXT. P10:- TRUE COPY OF THE STATEMENT OF ACCOUNT BELONGS TO MS. SOUDA V.
- EXT. P11:- TRUE COPY OF THE MINUTES TAKEN BY USING MOBILE PHONE CAMERA WHICH IS TAKEN DOWN IN HANDWRITING.
- EXT. P12:- TRUE COPY OF THE LETTER DATED 30/12/2014.
- EXT. P13:- TRUE COPY OF THE REPLY SENT TO THE 2ND RESPONDENT BY REGISTERED POST.
- EXT. P14:- TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE RESPONDENTS.

RESPONDENT(S) ' EXHIBITS :

- EXT. R1(A):- TRUE COPY OF THE SHOW CAUSE NOTICE NO.CLT.TER.UK PETROLEUM. POONOR DATED 04/12/2014 ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT.
- EXT. R1(B):- TRUE COPY OF THE MINUTES OF THE PERSONAL HEARING GRANTED TO THE PETITIONER ON 18/12/2014.
- EXT. R1(C):- TRUE COPY OF THE LETTER NO.CLT.TER.UK PETROLEUM. POONOR DATED 05/02/2015 FROM THE RESPONDENTS TO THE PETITIONER.
- EXT. R1(D):- TRUE COPY OF THE MINUTES OF THE PROCEEDINGS/ HAPPENINGS AT THE RO ON 07/02/2015.

/TRUE COPY/

rvs.

P.A.TO JUDGE

K. VINOD CHANDRAN, J

W.P(C) No. 4251 of 2015

Dated this the 28th day of May, 2015

J U D G M E N T

The petitioner is aggrieved with the termination of the licence, issued to the petitioner, for running a Petroleum retail outlet by the 1st respondent herein. The petitioner is issued with the licence as per Ext.P1 on 01.03.2005 for a period of 15 years. Independent of the grant made, the petitioner had also executed a lease agreement of the aforesaid property in favour of the first respondent for a period of thirty years. The 1st respondent is said to be insisting for the same, since the Petrol Bunk is erected at the expense of the Corporation and any termination effected, would result in the petrol Bunk being liable for shifting which would cause immeasurable prejudice and loss to the first respondent. The controversy is not with respect to the grant or the lease, but with respect to the subsequent termination of licence. The

order of which is produced at Ext.R1(c) by the respondents.

2. The petitioner's contention is that the petitioner had entered into an agreement of sale of the property with one Abdul Nasar and as per the terms of the agreement, the said purchaser also had to be included in the dealership. Such reconstitution of dealership could have been only with the consent of the respondent, which, the petitioner had applied for and obtained under Ext.P5. Subsequently, due to certain disputes with the 3rd party, that is Abdul Nasar, reconstitution did not materialize and that resulted in certain litigations initiated by the said Abdul Nasar, in which the respondent Corporation was also a party. The allegation raised by the petitioner is that, due to such reconstitution having not been effected, there was a problem with respect to the upliftment of products, for reason of non-facilitation of the transfer of money as per the RTGS system, through the banks. The petitioner though, later allowed to continue the dealership, the

Company has by the impugned action forcefully taken over the property that too, without notice and without even serving a termination letter on the petitioner. The dealership is also said to have been handed over to another person, which are the subject of challenge before this Court.

3. The learned counsel appearing for the respondent, however, would specifically contend that though the reconstitution had not been effected, as had been sanctioned by the Corporation, the termination now effected, is not, by reason of any problems created on the reconstitution having not materialised. The failure to uplift the products occurred as early as in 2009 and continued over the years and even after a joint meeting held on 18.12.2014. The undertaking made by the petitioner in the joint meeting on 18.12.2014 had also not been complied with. It is also specifically pointed out that the termination letter, produced at Annexure.R1(c), was

served on the petitioner in the presence of the Village Officer, Senior Civil Police Officer of the Balussery Police Station and the Vice-President of the Karassery Grama Panchayath, who were requested to be present in the premises, when the physical take over of the dealership was made by the officers of the Corporation.

4. At the outset, it is to be noticed that despite the respondent having produced Annexure.R1(c) along with the statement dated 17.3.2015 the petitioner has not chosen to challenge the same. Further with respect to the contention that the order was not served on the petitioner, the minutes of the proceedings produced as Annexure R1(d), speaks otherwise. Ext.R1(d) specifically indicates that the petitioner was served with the communication in the premise of the Petrol bunk at 9.30 am on 7.2.2015; which he refused to accept. Hence the contention that dealership was terminated without notice is to be negatived.

5. True, the reconstitution did not fructify and the same was not carried out in the records of the Corporation with respect to the dealership. The consent of reconstitution itself was granted by the Corporation only on 25.03.2015. A brief glance at the termination order at Ext.R1(c), indicates that the failure to uplift products from the Corporation commenced in the year 2009 and the petitioner was intimated of the same by communications dated 03.01.2009 and various other dates in the years 2009, 2012 and 2013. Hence it cannot at all be said that the breach was only on account of the reconstitution proposed by the petitioner having not materialised. Further, as has been rightly pointed out by the learned counsel for the Corporation, the petitioner had requested for not proceeding with the reconstitution of the firm as per Ext.P7 dated 30.09.2013, while even prior to that date, specifically a month before; by Ext.P8 the petitioner was informed of the failure to uplift the products in August

2013. Hence the petitioners contention that the failure to lift the products was only due to the difficulties emanating from the proposed reconstitution cannot be countenanced.

6. The breach of the terms of licence occurred long prior to the reconstitution being mooted and continued over the years. Further, on the petitioner requesting a meeting with the officers of the Corporation; to thrash out the differences so as to commence operation, the petitioner was issued with a notice as per Annexure R1 (a) dated 4.12.2014. The petitioner accepts that the notice was received by him and he participated in the meeting conducted on 18.12.2014, the minutes of which are produced as Annexure R1(b). The petitioner had, in the said meeting, acknowledged that he had not uplifted the products since 14.2.2014 and that the same was due to financial constraints. It was also assured in the said meeting that the dealer would commence the sale in the dealership. It is later, after about 3 months that the

Corporation issued Annexure R1(c) termination, since, the petitioner had committed gross breach of the conditions of the licence as also the undertaking given by him on the meeting at 18.12.2014. For all the aforesaid reasons, the petitioner's claim to declare the termination as illegal to permit the petitioner to run the Petroleum Outlet, are found to be devoid of merit. The respondent Corporation would be entitled to deal with the dealership as it deems fit, in accordance with law.

The writ petition would stand dismissed. No costs.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma

//true copy//

P.A to Judge