IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

W.P.(C).No.29229 of 2015 (C)

PETITIONER(S):-

HINDUSTAN PETROLEUM CORPORATION LIMITED,
(A GOVT.OF INDIA ENTERPRISE)
REPRESENTED BY ITS CHIEF REGIONAL MANAGER,
P.B.NO.1601, ERNAKULAM NORTH.P.O, ERNAKULAM-682018.

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS
SMT.THUSHARA JAMES.

RESPONDENT(S):-
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1. KERALA STATE ELECTRICITY BOARD LIMITED,
REPRESENTED BY ITS CHAIRMAN & MANAGING DIRECTOR,
VYDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM-695004.

2. THE EXECUTIVE ENGINEER,
KSEB ELECTRICAL SECTION, AYATHL, KOLLAM-691021.

3. THE ASSISTANT ENGINEER,
KSEB ELECTRICAL SECTION, AYATHL, KOLLAM-691021.

4. NAVAS KHAN, S/O.LATE MOHAMMED IBRAHIM,
PULIMOOTTIL HOUSE, BEACH NORTH WARD,
KOLLAM WEST VILLAGE, KOLLAM-691012.

5. T.S.SUBRAMANIAM, S/O.T.S.SRINIVASAN,
SUDARSHANAM (H), ANANDAVALLESWARAM,
KAIKULANGARA NORTH, KOLLAM WEST VILLAGE,
KOLLAM-691012.

6. THE ELECTRIC & MOTOR WORKS,
NEAR AYATHIL JUNCTION, NH BYPASS, KOLLAM-691017.

7. SAFA FUELS (ADHOC HPCL DEALER),
NEAR AYATHIL JUNCTION, NH BYPASS, KOLLAM-691017.

8. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, POWER DEPARTMENT,
2ND FLOOR, NORTH BLOCK, SECRETARIAT,
THIRUVANANTHAPURAM-695001.

* Addl.9. KERALA STATE ELECTRICITY REGULATORY COMMISSION ,
(REPRESENTED BY ITS CHAIRMAN)
K.P.F.C. BHAVAN, C.V.RAMAN PILLAI ROAD,
VELLAYAMBALAM, THIRUVANANTHAPURAM - 695 010.

* (ADDITIONAL 9TH RESPONDENT IS IMPLEADED AS PER ORDER DATED 13.10.2015 IN IA.14499/2015).

R1 TO R3 BY STANDING COUNSEL SRI.SAJEEVKUMAR K.GOPAL.
R4 & 6 BY ADVS. SRI.K.R.VINOD
SMT.M.S.LETHA
SRI.V.SRI NATH
R8 BY GOVERNMENT PLEADER SMT.A.LOWSY.
R9 BY ADVS. SRI.N.N.SUGUNAPALAN (SENIOR ADVOCATE)
SRI.S.SUJIN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No.29229 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS:-

EXT.P1	TRUE COPY OF THE REGISTERED LEASE DEED DATED 17.6.2000 EXECUTED BETWEEN NAVAS KHAN AND T.S.SUBRAMANIAM.
EXT.P2	TRUE COPY OF THE REGISTERED LEASE DEED DATED 3.1.2001 EXECUTED BETWEEN T.S.SUBRAHMANIAM AND HINDUSTAN PETROLEUM CORPORATION LIMITED, THE PETITIONER.
EXT.P3	TRUE COPY OF THE DEALERSHIP AGREEMENT DATED 23.9.2005 BETWEEN THE PETITIONER AND THE 6TH RESPONDENT.
EXT.P4	TRUE COPY OF THE LETTER ISSUED BY THE PETITIONER TO THE 6TH RESPONDENT M/S.ELECTRIC & MOTOR WORKS DATED 5.3.2015.
EXT.P5	COPY OF THE LETTER DATED 8.5.2015 ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT
EXT.P6	TRUE COPY OF LETTER DATED 20.6.2015 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.
EXT.P7	TRUE COPY OF LETTER DATED 1.8.2015 ISSUED BY THE PETITIONER TO THE 3RD RESPONDENT.
EXT.P8	TRUE COPY OF LETTER DATED 4.9.2015 ISSUED BY THE 3RD RESPONDENT.

RESPONDENT(S)' EXHIBITS:-
--- NIL.

Vku/- [true copy]

K. Vinod Chandran, J

W.P.(C).No.29229 of 2015-C

Dated this the 26th day of November, 2015

JUDGMENT

The petitioner is aggrieved with the fact that the petitioner's application for electric connection to a petroleum dealership has been declined as per Exhibit P6 for reason of no consent having been issued by the 4th respondent, who is the owner of the property. The officials of the Kerala State Electricity Board [for brevity "KSEB"], which is the 1st respondent herein, turned down the application of the petitioner on the ground that as per clause (2) of Regulation 45 of the Kerala Electricity Supply Code, 2014 [for brevity "Supply Code of 2014"] if the applicant is not an owner but an occupier of the premises, they shall furnish a No Objection Certificate from the owner of the premises along with the other documents stipulated therein.

2. The petitioner has challenged Regulation 45(2) also herein. The facts arising in the above case would indicate that a challenge to Regulation 45(2) need not be considered as of now and the writ petition itself can be disposed of on the basis of the peculiar facts arising in the above case.

3. The 4th respondent is admittedly the owner of the property, which, the learned counsel appearing for whom would say, is more than 32 cents which has been leased out and comes to around 55 cents. The primary contention taken is that the superstructure on the land is on the balance 23 cents, which has not been leased out to the petitioner.

4. Be that as it may, by Exhibit P1 the 4th respondent entered into a lease with the 5th respondent with respect to 32 cents of property, the schedule of which clearly indicates the description. Admittedly there is also a clause in the lease agreement, which entitles the lessee to enter into sub-lease with any other. On the basis of the specific entitlement, the 5th respondent had entered into a sub-lease with the petitioner as per Exhibit P2. The sub-lease agreement was as a pre-cursor to the dealership of petroleum products, which the 6th respondent, a partnership firm, intended to take out from the petitioner herein. Lease of appropriate premises is a pre-condition for granting such dealership. This is to ensure that the outlet is not stopped by reason of the default of the authorised dealer; and the

petitioner Company could either by themselves or through another operate the retail outlet.

5. Having entered into Exhibit P2, the dealership of petroleum products was also granted to the 6th respondent, a partnership firm. As is indicated in Exhibit P3, the dealership agreement was entered into between the petitioner and the partners of the 6th respondent, who are respectively the respondents 4 and 5. The dealership was also carried out in the said premises from 2005, on which date Exhibit P3 was entered into. The partnership firm having not complied with the terms of the dealership, the dealership itself stood terminated by Exhibit P4 and by virtue of the specific clause in the dealership agreement, the petitioner sought to take over the property and carry on the operations of the petroleum agency. By which time the electricity connection to the premises stood disconnected. It was in such circumstance that the petitioner gave a request for restoration of electric supply to consumer No.16646 in which the above dealership was carried on and which was declined by Exhibit P6.

6. Evidently, a reading of Exhibit P3 would indicate that the agreement stipulated that on termination of the agreement, on grounds of breach of any of the covenants and stipulations in the agreement, the Corporation would be entitled to, by clause 57 of the said agreement, take vacant and peaceful possession of the premises and enter upon the premises without any hindrance or objection from the dealer and the dealer shall cease to have any right whatsoever to enter or remain on or use the premises or the outfit in any manner. Hence, on termination of the dealership, subject to the condition that the dealer would be entitled to remove all goods, property and effects belonging to the dealer, possession of the premises has to be handed over to the Corporation, who would be entitled to carry on the dealership for the balance lease period also. The lease of the premises, it is to be noticed, is validly with the petitioner-Corporation and the 6th respondent firm was merely given the right to carry on the dealership of the petroleum products; the equipments of which were also the property of the Corporation.

7. The learned counsel for the 4th respondent would in fact take a contention that the superstructure on which they are seeking electric connection, is not within the leased out premises. This Court is unable to countenance such a contention, since admittedly the lease was made by the 4th respondent to the 5th respondent and as a pre-cursor to the dealership agreement, a sub-lease was made by the 5th respondent to the petitioner herein for carrying on a petroleum dealership in the premises. Exhibit P2 sub-lease agreement specifically speaks of superstructures having been demised to the petitioner. Further, a mere perusal of Exhibit P3 would indicate that the 4th respondent, the owner of the property, also had been a partner in the 6th respondent, who had taken out the dealership. The respondents 4 and 5 as partners of the 6th respondent, had been carrying on the dealership for the past so many years on the basis of the agreements at Exhibits P1, P2 and P3. The power connection sought for is to the buildings in which the dealership was carried on and the owner or the partners of the firm cannot take a contention that the premises in which the dealership was carried

on was not leased out.

8. At this point, without factual determination it may not be possible for this Court, sitting in the jurisdiction under Article 226 of the Constitution, to decide upon whether the superstructures are in fact leased out to the petitioner. The issue raised herein is also not the termination of the dealership or the subsistence of the lease, which definitely cannot be raised in a petition under Article 226.

9. The petitioner, who is the sub-lessee, raise a contention that the petitioner ought to be granted electricity connection in the demised premises, which is in possession and enjoyment of the petitioner on a valid lease. A similar issue had arisen before this Court, in which another learned Single Judge disposed of the case by judgment dated 13.11.2015 in W.P.(C) No.20206 of 2015. Therein, the petitioner was a tenant who was faced with a similar problem of no consent having been received from the owner of the property who had validly leased out a shop room to the petitioner therein. Though Regulation 45 of the Supply Code of 2014 was challenged therein also, it was held so

in paragraph 4:

> "4. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that the insistence by the respondent Board of a no objection certificate, as also a land tax receipt, from the owner of the building, under circumstances where there is a dispute between the owner of the building and the tenant that is pending consideration before this Court, would result in a situation where it would be impossible for the petitioner [the tenant] to apply for a restoration of the electric connection to the premises. I therefore feel that the interests of justice would be served by directing the respondents 1 to 3 to forthwith restore the electrical supply to the premises in question, subject to the petitioner complying with the attendant formalities in connection with the same, other than the requirement of production of the documents mentioned in Ext.P1. It is made clear that the mere restoration of electric supply to the premises of the petitioner will not prejudice the contentions of the 4th respondent in the Rent Control Appeal that is stated to be pending before the District Court, at the instance of the petitioner".

10. This Court is inclined to follow the above-said directions insofar as granting the petitioner the liberty for

continuance of the electricity connection even *de hors* the permission/consent from the 4th respondent herein. It is also to be noticed that in the aforesaid judgment it was noticed that there was a Rent Control Petition pending and the judgment passed would be subject to the result of the Rent Control Petition. The factual facts which have been agitated herein would be left open to be agitated before the appropriate forum, if the 4th respondent is so advised. Thus, without going into the merits of the contentions raised herein as to the terms and extent of lease, the writ petition is allowed, directing the respondent-Board, as of now to give a fresh connection to the dealership which was existing there. Parties are left to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]