
(2000) 11 KL CK 0026
In the High Court Of Kerala
Case No : O.P.No. 30566 of 2000

Cochin Fashion Jewellery

APPELLANT

Vs

K.S.E.B.

RESPONDENT

Date of Decision : 15-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity Rules, 1956 — Rule 79, 80

Citation : (2000) 11 KL CK 0026

Hon'ble Judges : R.Bhaskaran, J

Bench : Single Bench

Advocate : Jacob Varghese and V.A. Ganguja, for the Appellant; R.K. Venu Nair, P.M. Saji, P.L. Ananthasivan and K.K. Chandran Pillai, for the Respondent

Final Decision : Dismissed

Judgement

R. Bhaskaran, J.—The petitioner is a partnership firm conducting jewellery business on the eastern side of M.G. Road at Ernakulam. Petitioner is a tenant in the first floor of the building. Petitioner is aggrieved by the proposed setting up of a transformer in front of petitioner's shop room and the apprehension of the petitioner is that if the transformer is put up there it will block the view of the shop. Petitioner approached this Court earlier by filing O.P. 7383/2000 and this Court by judgment dated 20.6.2000 directed the second respondent to dispose of Ext. P1 representation after hearing the petitioner as well as the affected parties. The second respondent, by Ext. P4 order ratified the action of the Assistant Executive Engineer to put up the transformer in the same place. The petitioner, therefore, challenges Ext. P4 order in this Original Petition.

2. It is the case of the petitioner that apart from the fact that the installation of transformer will completely obstruct the view of petitioner's shop, the employees and customers of the petitioner will have to face risk and damage involved by the installation of the transformer, very near to the premises of the petitioner. It is also stated that enough vacant space near the proposed site is also there and if

only the site is shifted to one or two metres towards south, there will be no complaint from any quarters.

3. The petitioner has impleaded additional respondents 3 and 4. The additional third respondent is M/s. Music World doing business in the ground floor of the same building and it is for their business that the transformer is being installed. The additional fourth respondent is the adjacent property owner where a new jewellery in a large scale is being started. If the petitioner's request to move the proposed transformer to a little south is to be accepted, the only person who has to object to it, is the fourth respondent.

4. A statement is filed on behalf of the Kerala State Electricity Board. The additional fourth respondent has filed counter affidavit. The petitioner has also taken out an Advocate Commission to report about the points involved in the case.

5. In the Statement filed on behalf of respondents 1 and 2 it is stated that the transformer is to be fixed as near as possible to the third respondent and if it is shifted to a little south the fourth respondent will object to it. It is also stated that respondents 1 and 2 have only acted according to law and there is nothing for this Court to interfere.

6. In the counter affidavit filed by the fourth respondent it is stated that the petitioner is only a tenant of a portion of a building and the transformer is installed for the benefit of another tenant of the same building and it is not used for the purpose of the fourth respondent. It is further stated that it was because the fourth respondent wanted to avoid the installation of a transformer in front of his building that he purchased a dry type transformer spending about Rs. 6 lakhs and therefore he cannot allow the request of the petitioner. It is also stated that the petitioner has got an alternative remedy of revision and that the Original Petition is not maintainable.

7. The learned counsel for additional third respondent submitted that the delay in installation of the transformer causes heavy loss to him and a decision in this respect is to be taken at the earliest.

8. I heard the learned counsel for petitioner and the learned counsel for the respondents elaborately.

9. Ext. P4 is under challenge in this Original Petition. It was passed as directed by this Court in the earlier Original Petition. It is stated in Ext. P4 that the third respondent is granted power allocation of 87 KVA and on 5.3.2000 two posts were erected at the eastern side of M.G. Road and western side of footpath for erecting a transformer. On the representation of the petitioner, the site was inspected by the Executive Engineer again. Thereafter, as directed by this Court, the parties were heard. The two posts were erected at 5.5 metres from the building and at about 10 metres southern side from the entrance to the petitioner's shop. It is proposed to be installed at a height of 10 feet. It will in no

way affect the view of the petitioner's shop. It has got the required clearance from the building. It will be energised only after getting approval from the Electrical Inspector. It is stated that there is no alternative site available in the locality.

10. The scope of interference by this Court is very limited. Only if there is any violation of any legal provisions or the principles of natural justice or want of jurisdiction, there is possibility for this Court to interfere. Malafide exercise of power is another ground for interference. In the absence of any of these, there is no justification for substituting the view of this Court to that of the view of the Engineers of the Kerala State Electricity Board.

11. Learned counsel for petitioner highlighted three points at the time of arguments. The first was that the transformer is proposed to be erected violating the provisions of the Indian Electricity Act and Rules in as much as the necessary clearance is not there from the transformer and the building wherein the petitioner is doing business. In the Original Petition, petitioner has stated that the distance between a building and the place of installation of a transformer shall not be less than seven metres. But, at the time of argument, counsel did not point out any provision to that effect. Learned counsel pointed out rules 79 and 80 of the Indian Electricity Rules. R. 79 provides for minimum horizontal clearance of 1.2 metres when the line passes adjacent to a building. It is stated that since the explanation to R. 79 says that a building shall be deemed to include any structure whether permanent or temporary, the advertisement board of the petitioner will also become part of the building. The original report of the Commissioner showed the distance between the proposed transformer and advertisement board of the petitioner as 4.50 metres and the distance between the proposed transformer and the western wall of petitioner's shop as 6.30 metres. On the request of the petitioner, the Commissioner was again asked to verify whether there is any mistake in the statement and the Commissioner has filed an additional report in which it is stated that the distance given as 4.50 metres is the distance from the proposed transformer the advertisement board of petitioner's shop. It is also stated that the distance between the petitioner's advertisement board which is fitted across the building from the petitioner's shop and the south pole of the proposed transformer is 2.25 metres. According to the learned counsel for petitioner, the transformer has a width of one metre and half of which will be on the eastern side of the poles. Even so, it can be seen that there will be horizontal clearance for 1.2 metres as provided in R. 79. Even apart from this, it is not possible to accept the contention of the petitioner that the advertisement board can be considered as a building merely for the reason that as per the explanation to R. 79, the building shall be deemed to include any structure whether permanent or temporary. The meaning of the word "structure" in this context must take its colour from the main expression "building" and it is only a permanent or a temporary structure which has the attributes of a building that will be taken by the explanation to R. 79. If the advertisement board is excluded, there is a distance of 6.30 metres between the proposed transformer

and the western wall of the petitioner's shop. Therefore, I do not find any reason to think that there is any violation of statutory provisions.

12. The next point urged by the petitioner is with regard to the malafide exercise of power by the respondents. It has to be pointed out that there is no specific allegation of malafides raised against any Officer of the Kerala State Electricity Board and without a strong foundation in the pleadings, it is not possible to consider this question. The vague suggestion in the Original Petition that the transformer is installed for the purpose of the additional fourth respondent is also not correct, since the fourth respondent has got his own dry type transformer above the roof of his building.

13. The third point argued by the petitioner's counsel is that if the transformer is shifted at least one metre towards south, the petitioner's shop room will get a clear view from the M.G. Road and the risk involved can also be avoided. In this connection, the contention of the additional fourth respondent has also to be taken into account. The additional fourth respondent has stated that it is to avoid the putting up of a transformer in front of his building that he has chosen to purchase a dry type transformer and put it above the roof of the building so that he will have no obstruction in front of his building. Moreover, when the transformer is erected for the purpose of the additional third respondent and not for the purpose of the additional 4th respondent and the present proposal to fit it in front of the shop of the third respondent, there is no equity in asking the respondents to shift it towards south. No doubt, the Commissioner has reported as follows:

"If it is installed about a height of the first floor of the building, it would be fixed about 6.30 metres away from the transformer with only a glass partition in between. If that be the position any mis-happening of the transformer would put the properties of petitioner's shop at risk and danger."

14. It is submitted by the respondents that, this aspect will be taken care of by the Electrical Inspector before granting permission to energise the transformer. In the absence of any allegation of malafides against the Engineers of the Kerala State Electricity Board, it is not possible to interfere with the selection of the place for installation of the transformer in the exercise of the jurisdiction under Art. 226. The Original Petition is therefore dismissed.