

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

WP(C) .No. 1424 of 2015 (C)

PETITIONER(S) :

M/S.K.C.OOMMEN & SON,
REPRESENTED BY M.C.JOSEN, MANAGING PARTNER,
IOC DEALER, TIRUVALLA - 689 101,
PATHANAMTHITTA DIST.

BY ADV. SRI.S.ABDUL RAZZAK.

RESPONDENT(S) :

1. INDIAN OIL CORPORATION LTD.,
REPRESENTED BY DIVISIONAL RETAIL SALES MANAGER,
TRIVANDRUM DIVISIONAL OFFICE,
GROUND FLOOR, PREMIER PARK, INCHAKKAL BYE PASS,
VALLAKADAVU P.O., TRIVANDRUM - 695 008.
2. CHIEF DIVISIONAL RETAIL SALES MANAGER,
INDIAN OIL CORPORATION LTD.,
TRIVANDRUM DIVISIONAL OFFICE, GROUND FLOOR,
PREMIER PARK, INCHAKKAL BYE PASS, VALLAKADAVU P.O.,
TRIVANDRUM - 695 008.

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT.P1 - PHOTOCOPY OF PARTNERSHIP DEED DATED 8-10-2003.
- EXT.P2 - PHOTOCOPY OF DEALERSHIP AGREEMENT DATED 17-10-2003.
- EXT.P3 - PHOTOCOPY OF DEATH CERTIFICATE DT.12-1-06.
- EXT.P4 - PHOTOCOPY OF LETTER DATED 28-6-2013 FOR RECONSTITUTION FROM R2.
- EXT.P4 (A) - PHOTOCOPY OF LETTER DATED 5-11-2013 FOR RECONSTITUTION FROM R2.
- EXT.P5 - PHOTOCOPY OF THE EXTRACT ISSUED BY THE REGISTRAR OF FIRMS DT.8-1-2014.
- EXT.P6 - PHOTOCOPY OF APPLICATION TO R2 DATED 13-1-2014.
- EXT.P7 - PHOTOCOPY OF IOC LETTER DATED 31-1-2014.
- EXT.P8 - PHOTOCOPY OF REPRESENTATION TO R2 DT.25-7-2014.
- EXT.P9 - PHOTOCOPY OF SHOW CAUSE NOTICE DT.31-12-2014.
- EXT.P10- PHOTOCOPY OF PETITIONER'S EXPLANATION DT.12-1-2015 TO 2ND RESPONDENT.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.1424 of 2015

Dated this the 19th day of January, 2015

JUDGMENT

The petitioner has approached this Court with the following prayers:

"i) a writ, order or direction in the nature of certiorari calling for the records of the case and quashing Ext.P9 show cause notice of the 2nd respondent;

ii) a writ, order or direction in the nature of mandamus directing the respondents not to take any action detrimental to petitioner's commissioned dealership based on the accusation in Ext.P9;

iii) any other writ, direction or order as this Hon'ble Court may deem fit and proper on the facts and circumstances of the case and to allow this Writ Petition with the petitioner's costs."

2. The petitioner satisfied the requisite fees of Rs.25,000/- (Rupees Twenty five thousand only) and the same is stated as appropriated by the respondent Company as well. It was thereafter, that the petitioner was let known as per Ext.P7 dated 31.01.2014 that the application for reconstitution of the dealership cannot be considered and accordingly, the same was turned down. The petitioner submitted Ext.P8 representation

before the 2nd respondent, explaining the sequence of events pointing out that the person sought to be inducted is nobody other than his son. But the petitioner has been served with Ext.P9 show-cause notice dated 31.12.2014 with the proposal of termination of dealership for the alleged infringement of the condition in the agreement dated 10.07.2006. It is stated that, the petitioner has submitted Ext.P10 reply, but since there is every chance to take coercive steps immediately, after turning down the request, the petitioner is constrained to approach this Court by filing this writ petition.

3. Heard the learned Standing Counsel appearing for the respondent Corporation as well, who submits that the writ petition itself is a premature one, in so far as no action has been taken, but for the proposal, in view of the violation of the terms of agreement. It doesn't mean that, in every cases termination has to be the end result and that it is for the respondent to consider the explanation submitted by the petitioner and to take appropriate action. The learned Standing Counsel also points out that, the violation is virtually admitted, as no prior approval of

the Company was obtained before induction of a new partner. The question is not whether 'who' has been inducted, but whether 'prior approval' of the Company was obtained. It is also brought to the notice of this Court that there is absolutely no merit in the contention that copy of the agreement dated 10.07.2006 was not made available to the petitioner, as the said agreement was executed by the petitioner with his open eyes. Even otherwise, exactly similar clause stipulating to have prior approval is existing in the prior agreement as well, copy of which has been produced by the petitioner as Ext.P2.

4. Clause 47 of Ext.P2 agreement reads as follows:

"47. Except with the previous written consent of the Corporation:

(i) The Dealer shall not enter into any arrangement contract or understanding whereby the operations of the Dealer hereunder are or may be controlled carried out and/or financed by any other person firm or company whether directly or indirectly and whether in whole or in part.

(ii) The Dealer himself (if he be an individual) or the partners/members or any of them of the Dealer (if the Dealer is a firm/Co-operative Society) shall not take up any other employment or engage in any other business apart from the running of the retail outlet which is the subject matter of this Agreement.

(iii) The Dealer (if it be a firm or a Co-operative society) shall not effect any change in its constitution

whether in the identity of its partners members or in the share/share-holding of any of them or in the terms of the Deed of Partnership or of the Bye-laws as the case may be."

The learned counsel also points out that, if the decision to be taken by the respondents comes to be detrimental to the rights and interests of the petitioner, it is still open for the petitioner to move the appropriate authority by way of 'Arbitration' in view of the specific Clause incorporated in the agreement.

5. After hearing both the sides, this Court finds that the matter has to be finalised by the respondents with proper application of mind as to the circumstances under which, induction of the partner has been effected and as to the extent of prejudice that has been resulted. An opportunity of hearing shall be given to the petitioner in this regard and appropriate order shall be passed in accordance with law, at the earliest, at any rate, within 'one month' from the date of receipt of a copy of this judgment. It is also made clear that, if any stringent action is taken by the respondent, involving termination of the dealership,

it shall not be given effect to, for a period of 'one month' thereafter, so as to enable the petitioner to pursue further remedy, in accordance with law.

The writ petition is disposed of.

**P.R. RAMACHANDRA MENON,
JUDGE**

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