

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2015

Coram

The Hon'ble Mr. Justice T.S.SIVAGNANAM

W.P.No.33067 of 2014
and
M.P.No.1 of 2014

1.B.Vijaya Babu
2.B.Prasanna

.. Petitioners

Vs.

The Chief Divisional Retail Sales Manager,
Indian Oil Corporation Ltd.,
Chennai Divisional Office,
No.500, Anna Salai, Teynampet,
Chennai - 18.

.. Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus forbearing the respondent from divesting the petitioner or her nominee the second petitioner in operating the COCO styled IBP Auto Services presently known as Sri Venkateswara Agencies located at S.No.20 at Thukkapettai Village, Pondy Krishnagiri Road, NH-66, Chengam Taluk, Tiruvannamalai District, Tamil Nadu in consonance with Ministry of Petroleum and Natural Gas Letter No.P-19011/5/2014-IOC dated 28.07.2014.

For Petitioners

.. Mr.Niranjan Rajagopalan
for M/s.G.R.Associates

For Respondent

.. Mr.R.Ravi

ORDER

Heard Mr.Niranjan Rajagopalan, learned counsel for the petitioners and Mr.R.Ravi, learned counsel for the respondent Oil Corporation and with the consent of either side, the writ petition itself has been taken up for disposal. I have perused the materials

placed on record including the counter affidavit filed by the Senior Manager, Indian Oil Corporation Limited, Chennai Divisional Office, Chennai - 18.

2.The petitioners in this writ petition seek for the issuance of a writ of mandamus to forbear the respondent from divesting the first petitioner or her nominee the second petitioner in operating the COCO styled IBP Auto Services presently known as Sri Venkateswara Agencies located at S.No.20 at Thukkapettai Village, Pondy Krishnagiri Road, NH-66, Chengam Taluk, Tiruvannamalai District.

3.The second petitioner is the son of the first petitioner and now they seek for the aforementioned prayer since there was an attempt made by the respondent to divest and replace the operations of the COCO operator from the hands of the second petitioner to an adhoc dealer. The same is being challenged as arbitrary, unreasonable and without notice and against the decision of the Honourable First Bench in W.A. Nos.309 and 377 of 2010 and W.P. (MD) Nos.4532, 3962, 3481 and 1255 of 2007 dated 25.08.2014.

4.The learned counsel for the petitioners submitted that the issue involved in this writ petition is squarely covered by the earlier decision of the Honourable First Bench of this Court which has been followed by the Madurai Bench of this Court in W.P.(MD) Nos.12102 to 12104 of 2014.

5.In the counter affidavit, the only distinction which the respondent seeks to make with that of the M & H contractors and that of the COCO service providers, is by stating that the COCO service providers have been selected based on a specific advertisement for a specific assignment and for a definite tenure of operation and it is not related to the other cases where the M & H contractors were parties.

6. The challenge before the Honourable First Bench in a batch of cases filed by the land owners, who had given their lands on lease to the Indian Oil Corporation for setting up petroleum retail outlet, was that they should be allotted retail outlets under the land owner category. Those writ petitions were dismissed and challenging the said order, writ appeals were filed and the other writ petitions which were filed subsequently, were also tagged along with the appeals. The Honourable First Bench took into consideration the argument that M & H Contractors, who are nominees of the land owners were also sought to be terminated on the ground of less than appropriate performance. The Honourable First Bench took note of the subsequent development during the pendency of the matter where the land owners were permitted to nominate different persons as M & H Contractors, provided they met the bench mark of the Indian Oil

Corporation. Further development was that the Government of India, Ministry of Petroleum and Natural Gas dated 28.07.2012 suggests review of the earlier policy decision and the same was on the cards. Taking note of these factors, the writ appeals and writ petitions were disposed of by issuing the following directions:

"3..... (ii)If the Indian Oil Corporation is satisfied with the performance of the Present M&H Contractors, no precipitative action would be necessary. If they are not satisfied, then they will put the relevant parties to notice of their intent to change on account of lack of performance, so that the parties have a right to explain their stand.

(iii)Needless to say, if a new policy would come into operation, its applicability would depend on how that policy is structured."

7.The only difference in the instant case is that the second petitioner is the COCO service provider and not the M & H contractor. I am of the view the nature of contract entered into between the second petitioner and the Oil Corporation is not substantially different in as much as both the COCO service providers and the M & H Contractors operate the outlet for the Corporation. Therefore, the order passed by the Honourable First Bench covers this writ petition also.

8.In the result, the writ petition is disposed of with the following directions:

"3..... (ii)If the Indian Oil Corporation is satisfied with the performance of the Present M&H Contractors, no precipitative action would be necessary. If they are not satisfied, then they will put the relevant parties to notice of their intent to change on account of lack of performance, so that the parties have a right to explain their stand.

(iii)Needless to say, if a new policy would come into operation, its applicability would depend on how that policy is structured."

No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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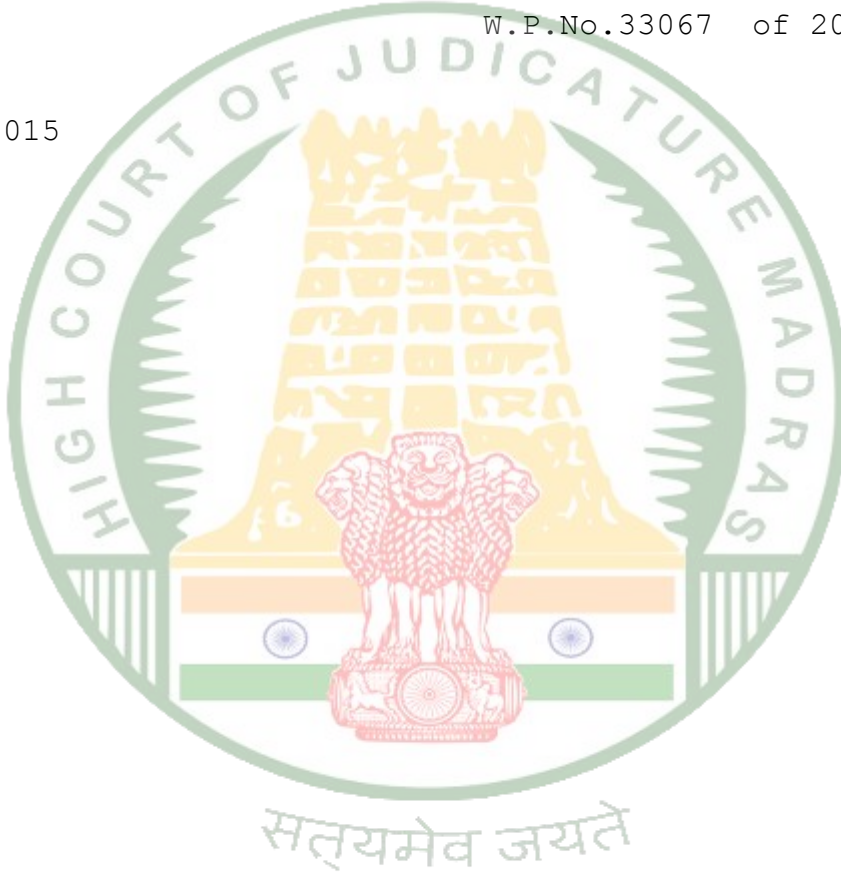
To

The Chief Divisional Retail Sales Manager,
Indian Oil Corporation Ltd.,
Chennai Divisional Office,
No.500, Anna Salai, Teynampet,
Chennai - 18.

1 cc to M/s.G.R.Associates ,Advocate, SR.No.9215
1 cc to Mr. R.Ravi,Advocate, SR.No.9339

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