IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2015

Date of Reserving the Judgment	Date of Pronouncing the Judgment
30.01.2015	04.02.2015

Coram

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

W.P. No.2570 of 2014
&
M.P.No.1 of 2014

Ajitha Gas Agency
rep. By its Proprietor S.N.Sridharan ...Petitioner

Vs

1. The Executive Director
   Tamil Nadu State Office
   Indian Oil Corporation Ltd.
   Marketing Division, Southern Region
   Indian Oil Bhavan
   139, Mahatma Gandhi Road
   [Nungambakkam High Road]
   Chennai 34.

2. The Chief Area Manager
   Indian Oil Corporation Ltd.,
   Marketing Division
   500 Anna Salai,
   Teynampet,Chennai 18. ...Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records relating to the first respondent vide Ref. NO.TNL/S/218 dated 15.1.2014, and to quash the same and consequently direct the respondents to restore the petitioner's distributorship viz. M/s Ajitha Gas Agency.

For petitioner : Mrs.Sudharshana Sunder

For Respondents : Mr.M.Ravindran, Sr.Counsel
for Mr.V.Anantha Natarajan

O R D E R

Heard Mrs.Sudharshana Sunder, learned counsel appearing for the petitioner and Mr.M.Ravindran, learned Senior Counsel, appearing for the respondents.

2.The petitioner seeks for issuance of writ of certiorarified mandamus to quash the order passed by the first respondent viz. the Executive Director of the Indian Oil Corporation (Marketing Division), Southern Region dated 15.1.2014, and to direct the respondents to restore the petitioner's distributorship carried under the name and style M/s Ajitha Gas Agency.

3.The facts which are necessary for the disposal of the writ petition are that the petitioner was granted LPG Distributorship under the quota reserved for schedule caste /schedule tribe and a memorandum of agreement was entered into on 24.8.1989. The petitioner is said to have commenced the business immediately thereafter. The petitioner would state that during October 2002, he entered into an agreement with one A.Chitra, wife of K.P.Asokan, for providing financial assistance and the petitioner proposed to induct her as a Partner and sought for approval of the second respondent. The second respondent by proceeding dated 25.10.2002, rejected the same. Subsequently, another request was made by the petitioner to reconsider the same and accept re-organisation of the business by inducting a Partner citing the family commitments. That request for re-consideration was also rejected.

4.Subsequently, by another communication dated 8.11.2002, certain short falls were pointed out as against the petitioner. While the facts stood thus, the petitioner submitted a request in 2012 to convert the business into a Partnership Firm by inducting one G.Gayathri as his Parter. Copies of the Draft Partnership Deed and necessary documents were forwarded to the respondents. The proposal submitted by the petitioner was acceptable to the respondent Corporation and necessary instructions were given to the petitioner by communication dated 30.01.2013 and it is submitted that as a consequence, the petitioner entered into Partnership with said Gayathri and also obtained a Registration Certificate from the Registrar of Firms dated 21.2.2013. whileso, the petitioner received the impugned order dated 15.01.2014, suspending the petitioner's Distributorship on the ground that he has unauthorisedly entered into Partnership with one Chitra and opened current account on 24.01.2012. The petitioner has challenged the impugned order on the ground that it is unreasonable and in violation of principles of natural justice.

5.Mrs.Sudharshana Sudar, learned counsel appearing for the petitioner after elaborately referring to the facts submitted that the impugned order is arbitrary and without any basis and the respondents without even issuing a show cause notice, have resorted to take a drastic action that too in respect of an alleged lapse pertaining to the period 2002 and there was no cause of action for suspending the petitioner's Distributorship in 2012, moreso, the respondent Corporation subsequently approved the petitioner's request to convert the business into Partnership business for admitting Gayathri as one of the Partners. Therefore, it is submitted that it is unreasonable on the part of the respondents to re-open the alleged lapse which occurred in 2002.

6.The learned counsel for the petitioner elaborately referred to the typed set of documents filed and submitted that all the disputes and differences between the petitioner and the Chitra had been settled and all those facts are well within the knowledge of the respondent Corporation.

7.The learned Senior Counsel appearing for the respondent Corporation, submitted that the petitioner's conduct in carrying on business was absolutely unsatisfactory and penal action has been taken against the petitioner on more than three occasions and penalty of Rs.1,43,044.35 was collected from the petitioner for diversion of 143 domestic cylinders. It is submitted that the respondent Corporation received the legal notice dated 6.3.2013, from A.Chitra, claiming that she is the partner of the petitioner Gas Agency and she is the owner of the Godown and also holding joint Bank Account of the Gas Agency along with the petitioner. Therefore, the respondent Corporation immediately ordered for conduct of a thorough enquiry and pursuant to the enquiry it came to light that the petitioner has entered into a deed of agreement with A.Chitra on 6.10.2012, registered as Document No.759 of 2002 for monetary consideration, a Partnership Deed, giving share of 49% to Mrs.A.Chitra and those transactions were entered into without prior approval and permission of the respondent Corporation. Further, it came to light that the petitioner has opened a current account in State Bank of India, Villivakkam Branch on 24.10.2002 and operated the same jointly in the name of the petitioner and A.Chitra and thereby violated Clause 21 and 23(c)(i) of the Distributorship Agreement and therefore, the dealership was suspended. Further, it is submitted that the fact regarding operating of a current account came to light only after the complaint was lodged by Chitra's Advocate in 2013 and after enquiry was conducted, details were gathered from the Bank, which showed that the account was jointly operated by the petitioner and A.Chitra between 2002 and 2010 and that fact has been suppressed.

8.The short issue which falls for consideration is whether the respondents are justified in placing the petitioner's Distributorship under suspension ?

9.The primary ground on which the petitioner challenges the order of suspension is on the ground that there was no valid reason for the Corporation to resort to suspending the Distributorship, without issuing show cause notice and the reasons for suspending the Distributorship are all stale matters which was dealt with by the respondent and it is not as if the same has arisen at this juncture warranting suspension.

10.Though at the first instance, the contentions raised by the petitioner appears to be impressive, on a closure examination of the fact, it appears otherwise. It is seen that though there were certain arrangements between the petitioner and A.Chitra and they approached the respondent Corporation for approval of their partnership, the respondent Corporation rejected the request made by them. Therefore, the petitioner could not have operated the business as a partnership along with Chitra. It is evident from the materials placed before this Court that the fact that there was a joint Bank Account by the petitioner and Mrs.A.Chitra came to light only after an enquiry was ordered to be conducted on receipt of legal notice issued by Chitra dated 06.03.2013. It appears that the respondent Corporation approached the State Bank of India, Villivakkam, and sought for information and they have given in writing that the account in the name of Ajita Gas Agency was a current account jointly operated by partners Sridharan and Chitra Asokan and the account was opened on 24.10.2002, and the last transaction was on 25.2.2010. Therefore, the petitioner cannot state that the impugned order of suspension was resorted to all of a sudden, but, based on matters which occurred, have come to light recently after enquiry was conducted in 2013. The petitioner's request for inducting Chitra as a partner having been rejected even during 2002, the petitioner could not have operated the Bank Account of the Distributorship jointly with Chitra from2002 to 2010. Therefore, the order of suspension was based on materials which have come to the notice of the respondents only recently.

11.In any event, there is a clear prohibition under clause 23(c)(i) of the Distributorship Agreement preventing the petitioner from entering into any arrangement, contract or understanding whereby the operation of the Distributorship 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, except with the previous written consent. The written consent sought for to admit a partner was rejected in 2002 and therefore, the petitioner could not have been operating the Gas Agency as Partnership Firm till 2010, when admittedly the Bank Account was jointly operated by Sridharan and Chitra Asokan. Therefore, no grounds have been made out to interfere with the impugned order.

In the result, the Writ Petition fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rpa

To

1. The Executive Director
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Indian Oil Corporation Ltd.
Marketing Division, Southern Region
Indian Oil Bhavan
139, Mahatma Gandhi Road
[Nungambakkam High Road], Chennai 34.

2.The Chief Area Manager
Indian Oil Corporation Ltd.,
Marketing Division
500 Anna Salai, Teynampet,Chennai 18.

1 CC to Mrs.Sudharshana Sunder, Advocate SR.No. 5966

1 CC to Mr.V.Anantha Natarajan, Advocate SR.No. 6089

W.P. No.2570 of 2014
and M.P.No.1 of 2014

KU (CO)
PSI (12.02.2015)