IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 23.3.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.No.668 of 2015

S.Karthiyayini ... Petitioner

versus

1. Hindustan Petroleum Corporation Limited Rep by its Director (Marketing) Retail SBU Hindustan Bhawan 8 Shoorji Vallabhadas Marg Ballard Estate Mumbai 400 001

2. Chief Regional Manager - Retail Retail Hindustan Petroleum Corporation Limited II Floor Petro Bhavan TTK Road Alwarpet Chennai 600 018 ... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the second respondent bearing Letter No.CHRRO/PNR/RET dated 10.12.2014 and quash the same and forbear the second respondent from divesting or interfering with the petitioners labour contract activities carried out in the HPCL Company outlet at Madhavaram in accordance with the policy dated 28.07.2014 issued by the Government of India Ministry of Petroleum and Natural Gas.

For petitioner Mr.AR.L.Sundaresan, Senior counsel for Mr.L.Damodaran

For respondent Mr.M.Vijayan, for M/s.King and Patridge

O R D E R

This Writ Petition is directed against the proceedings dated 10 December 2014, whereby and whereunder, Hindustan Petroleum Corporation terminated the service, maintenance and handling agreement dated 1 September 2011.

Brief facts:-

2. The petitioner was engaged as service provider of the Company owned and Company operated Retail Outlet of Hindustan Petroleum Corporation Ltd. at Madhavaram, Chennai. The engagement was made on 2 August 2011. The petitioner entered into an agreement with HPCL dated 1 September 2011, agreeing to operate the outlet up to 31 August 2014. Thereafter, the term was extended for a further period of three months, taking into account her performance.

3. While so, the Corporation by way of the impugned proceedings, terminated the agreement and expressed its intention to take over management.

4. The petitioner challenges the termination order on the ground that Government of India have taken a policy decision to renew contracts in case of satisfactory performance and as such, the respondents erred in terminating the agreement.

5. The second respondent filed a counter affidavit wherein it was contended that the contract was executed for a period of three years. The period expired on 31 August 2014. The petitioner wanted extension for a further period of three months. The Corporation extended the period up to 30 November 2014. Since the petitioner failed to handover the outlet even after the expiry of the extended period, the agreement was terminated.

Submissions :-

6. The learned Senior Counsel for the petitioner contended that the Government of India have advised the Public and Oil Corporations to continue with the current system till a new policy is devised. However, in an abrupt manner, and notwithstanding the decision taken by Government of India, the second respondent terminated the agreement. The learned Senior Counsel by placing reliance on the order dated 25 August 2014, in W.A.Nos.309 and 377 of 2010, contended that under similar circumstances, the Division Bench permitted the Corporation to assess the performance of contractors and extend the period. The learned senior counsel further contended that the petitioner was having legitimate expectation that she would be permitted to operate the outlet for another term. The petitioner invested considerable amount and as such, it was not open to the second respondent to terminate the agreement abruptly.

7. The learned counsel for the second respondent justified the termination. According to the learned counsel, the petitioner was engaged only as a service provider. The agreement executed with the petitioner contains the date of expiry of the agreement. The petitioner was given extension for a period of three months. Only when it was found that the petitioner wanted to continue indefinitely, the Corporation terminated the agreement in accordance with the prevailing policy. The learned Counsel further contended that pursuant to the request made by the petitioner, the Corporation

appointed an arbitrator. The Writ Petition is therefore no maintainable.

Discussion :-

8. The second respondent vide order dated 2 August 2011, engaged the petitioner as a service provider for a period of three years, effective the date of signing the agreement. The petitioner signed the agreement on 1 September 2011. The agreement provides that the engagement would be for a period of three months and more particularly up to 31 August 2014. The period was renewed up to 31 November 2014. Thereafter, having found that the petitioner has no intention to handover peaceful possession of the outlet, the second respondent terminated the agreement.

9. The petitioner wanted to continue the engagement under the premise that the Government of India is now seized of the matter and a decision would be taken shortly with regard to the continuation of existing policy.

10. The agreement executed by the petitioner and the second respondent contains a provision for arbitration. The relevant provision reads thus :-

> "All disputes and differences of whatsoever nature, whether existing or which shall at any time arise between the parties hereto touching or concerning the agreement, meaning, operation or effect thereof or to the rights and liabilities of the parties or arising out of or in relation thereto whether during or after completion of the contract or whether before after determination, foreclosure, termination or breach of the agreement (other than those in respect of which the decision of any person is, by the contract, expressed to be final and binding) shall, after written notice by either party to the agreement to the other of them and to the Appointing Authority hereinafter mentioned, be referred for adjudication to the sole Arbitrator to be appointed as hereinafter provided.
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> The appointing authority shall either himself act as the Sole Arbitrator or nominate some officer/ retired officer of Hindustan petroleum Corporation Ltd. (referred to as owner or HPCL) or a retired officer of any other Government company in the Oil Sector of the rank of Ch.Manager and above or any retired officer of the Central Government not below the rant of a Director, to act as the Sole Arbitrator to adjudicate the disputes and differences between the parties. The contractor/vendor shall not be entitled to raise any objection to the

appointment of such person as the Sole Arbitrator on the ground that the said person was an officer and or/shareholder of the owner another Government company of the Central Government or that he/she has to deal or had dealt with the matter to which the contract relates or that in the course of his/her duties, he/she has/had expressed views on all or any of the matters in dispute or difference.

11. The petitioner, in exercise of the right conferred under clause 16 of the agreement, called upon the second respondent to appoint an Arbitrator. The request was made on 15 December 2014. The Corporation vide letter dated 24 December 2014, informed the petitioner that there is no dispute or difference requiring appointment of arbitrator. The Corporation in the very same letter indicated that in case the petitioner still insist, appropriate orders would be issued for appointment of arbitrator. The petitioner thereafter, by letter dated 29 December 2014, once again requested the second respondent to appoint an arbitrator without any further delay. The second respondent pursuant to the request made by the petitioner, appointed Thiru.G.Hariharan as sole arbitrator to decide the dispute. The Arbitrator initiated arbitration proceedings by issuing notice dated 20 January 2015. The petitioner appeared before the Arbitrator and took four weeks time under the pretext that the Writ Petition is pending before this Court. The Arbitrator has adjourned the matter.

12. The core question is whether this Court should consider the matter on merits on account of the subsequent events relating to appointment of arbitrator.

13. The parties have agreed to a particular method for resolving the dispute. The petitioner exercised her option under the agreement and called upon the second respondent to appoint arbitrator. The second respondent agreed to the request and appointed the arbitrator. The arbitrator is now seized of the matter. The entire matter is at large before the arbitrator.

14. The Supreme Court in Empire Jute Company Ltd. vs. Jute Corporation of India Ltd., and another, 2007(14) SCC 680, observed that when there exists an arbitration agreement, Courts ordinarily would not exercise its jurisdiction to enter into the dispute.

15. In the case on hand, the parties have already subjected themselves to the jurisdiction of the arbitrator. It is not as if the appointment of arbitrator was at the instance of the second respondent. The request was made only by the petitioner, to refer the matter to the arbitrator. The second respondent has duly complied with the said request. It is not open to the petitioner to maintain the Writ Petition even after the appointment of Arbitrator. I am

therefore of the view that the issue requires consideration by the Arbitrator.

Disposal :-

16. In the upshot, I dismiss the Writ Petition. No costs. Connected miscellaneous petitions are also dismissed. However, I make it clear that I have not considered the merits of the matter and it is open to the Arbitrator to consider the issue independently without in any way being influenced by any of the observations made in this order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Director,
Hindustan Petroleum Corporation Ltd.
(Marketing) Retail SBU Hindustan Bhawan 8
Shoorji Vallabhadas Marg Ballard Estate
Mumbai 400 001

2. The Chief Regional Manager -
Retail Hindustan Petroleum Corporation
Limited II Floor Petro Bhavan TTK Road
Alwarpet Chennai 600 018

+2cc's to M/s.King and Patridge, Advocate, S.R.No.16506
+1cc to Mr.L.Dhamodaran, Advocate, S.R.No.16210

W.P.No.668 of 2015

UG(CO)
CA(30/03/2015)