

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2015

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.No.7455 of 2015

M/s.Rose Gas Agencies,
Rep. By its Partner Joseph Benziger,
73, Medavakkam Main Road,
Adambakkam, Chennai - 600 088.

...Petitioner

Vs.

The Deputy General Manager (LPG),
Tamil Nadu State Office,
Indian Oil Corporation,
Marketing Division,
Southern Region, Indian Oil Bhavan,
139, Mahatma Gandhi Road,
Chennai - 34.

...Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of certiorari to call for the records relating to the order of the respondent No.TNL/S/218, dated 12.03.2015, quash the same.

For Petitioner : Mr.N.R.Chandran, Senior Counsel
for Mr.M.Baskar

For Respondent : Mr.T.R.Rajagopalan, Senior Counsel
for Mr.R.Ravi

O R D E R

The petitioner herein was the proprietor of a Gas Agency by name M/s.Rose Gas Agencies. It was reconstituted in the year 2001 by inducting his wife as a partner and thereafter, the character has been changed into a partnership firm. The petitioner has been operating the LPG distributorship from 1984

onwards. A show cause notice dated 12.03.2015 was issued on the following grounds:

A serious complaint has been made by a lady officer by name Ms.M.Divya, Sales Officer, Chennai Area Office, stating that she was claiming conveyance/fuel charges without travelling on official duty, insulting a godown keeper because she was a Dalit lady. The complaint further states that the petitioner is in the habit of making false allegations against the officers of the Corporation so as to prevent them from carrying out their lawful activities.

2. After the above said complaints, an enquiry was conducted in which the petitioner has participated. The Committee found that the complaints against the petitioner have been substantiated. The petitioner is also said to have made several complaints against various officers of the Corporation, starting from 24.02.2002 to 08.09.2014.

3. Based upon the above said prima facie conclusion, the petitioner was placed under suspension and a show cause notice dated 12.03.2015 was issued as to why the dealership shall not be terminated. In the said impugned show cause notice, it has been stated that the petitioner has violated the Clauses 11, 23(a), 24 and 27(n) of the dealership agreement dated 20.07.2001 entered between the parties. Clause 11 speaks about the Indane Manual and the compliance of the terms and conditions mentioned thereunder by the petitioner. Clause 23(a) speaks about the duty of the petitioner to carry out and perform the direction and rules of the Corporation. Clause 24 has been invoked for restricting the access by threatening to initiate action under SC/ST atrocities act. Clause 27(n) has been invoked for acting prejudicial to the interest / good name of the Corporation. For better appreciation, Clauses 24 and 27(n) of the Dealership Agreement dated 20.07.2001 are reproduced hereunder:

"Clause 24 for restricting access by threatening to initiate action under SC/ST atrocities act.

The Corporation by which officers, representative or servants shall have at all times and in any circumstances free and unrestricted access to all premises used in connection with the business of the distributor and to inspect and take account

of all products in his possession and of all implements, tools, furniture, fittings and/or other property entrusted to the distributor by the Corporation.

Clause 27(n) for acting prejudicial to the interest / good name of the Corporation.

Notwithstanding anything to the contrary herein contained, the Corporation shall also be at liberty at its entire discretion to terminate this agreement forthwith upon or at any time after the happening of any of the following events, namely:-

If the distributor shall either by himself or by his servants or agents commit or suffer to be committed any act which, in the opinion of State Office in-charge of the Corporation for the time being at Chennai in the State of Tamil Nadu of the Corporation, whose decision in that behalf shall be final, is prejudicial to the interest or good name of Corporation or its products; the state office in charge shall not be found to give reasons of such decision."

The petitioner gave his reply to the show cause notice and thereafter, filed the present writ petition.

4. Learned Senior counsel appearing for the petitioner submitted that the order of suspension cannot be sustained in the eye of law. Clause 11 cannot be pressed into service in a case of this nature. Even otherwise, a suspension order can be passed only if anybody acted against the interest of the Corporation. There is no period mentioned in the suspension order. Therefore, there is no power available to exercise the power of suspension. The guidelines dated 03.06.2003 do not have application, as the same have been replaced by the subsequent revision carried out in the year 2014. It has been exercised as a punishment. Insofar as the challenge to the show cause notice is concerned, it is submitted that there is no basis for the said show cause notice. It is not as if the petitioner has committed any breach of the terms and conditions. Clause 27(n) does not have an application. A perusal of the order impugned

herein would show that the respondent has already pre-determined the entire issue. Therefore, the impugned order will have to be set aside.

5. Learned Senior counsel appearing for the respondent submitted that the guidelines dated 03.06.2003 would govern the case on hand. It is a case of acting detriment to the interest of the Corporation. Thus, the power of suspension has been rightly invoked. It is not as if the respondent does not have the jurisdiction to pass the order of suspension. The order of suspension has been imposed as a punishment based upon the relevant materials. Insofar as the challenge made to the show cause notice is concerned, it is submitted that the respondent who has issued the show cause notice has got the jurisdiction. It has been invoked in view of the alleged violation as mentioned thereunder. Clause 27(n) speaks about the alleged action of the distributor. The petitioner has been in the habit of harassing the officers of the Corporation. Complaints have been sent periodically upto the level of the President of India against the officers of the Corporation without any basis. The action of the petitioner prima facie would show that it has caused to the Corporation not only detriment but also the loss of reputation. The petitioner instead of waiting for the final orders has rushed to this Court. The respondent would have passed final orders by this time, but for obtaining an order in this writ petition. Thus, no interference is required.

6. Coming to the order of suspension is concerned, a perusal of the guidelines dated 03.06.2003 certainly gives the power of the respondent to impose the same. Admittedly, the respondent is the authority to issue the show cause notice. Thus, as per the said guidelines, he has got the power to issue show cause notice. It is based upon the prima facie materials including the findings of the Committee. It cannot be said that the alleged action is not detriment to the interest of the Corporation. Guidelines of the year 2014 have dealt with the different issue. Once it is not disputed that the respondent is the jurisdictional authority to issue the show cause notice and then to pass an order of suspension, then the challenge made on the power of the suspension cannot be accepted especially when such a power is available. It is not as if such a power is conferred on anybody else. There is no material on record to show that the said power has been exercised as a punishment. Clause 11 of the dealership agreement also provides for the binding nature of the Indane Manual. Therefore, considering the

above, this Court is of the view that the power of suspension is certainly available to the respondent.

7. Coming to the issue of challenge made to the show cause notice, it is trite law that such challenge can be made only on lack of jurisdiction, malafide and non-application of mind. All the three grounds are not available in the case on hand. A show cause notice, as stated above, has been issued for the violation of Clauses 11, 23(a), 24 and 27(n) of the dealership agreement dated 20.07.2001. Certainly the agreement governs the parties. There is no malice in law or on facts. There are prima facie materials to proceed against the petitioner. The petitioner has in fact given his reply to the show cause notice. Therefore, submissions raised on the show cause notice are also rejected.

8. Accordingly, for the reasons stated above, the writ petition stands dismissed. Considering the fact that the impugned show cause notice was issued as early as on 12.03.2015, for which the petitioner has also given his reply, the respondent shall pass final order within a period of eight weeks from the date of receipt of a copy of this order. The petitioner is also at liberty to give his further reply, if so advised, within a period of two weeks from the date of receipt of a copy of this order. However, it is made clear that the observation of this Court, either on facts or in law, are only prima facie in nature and thus do not have any bearing on the final order to be passed by the respondent. No Costs. M.P.No.1 of 2015 is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar

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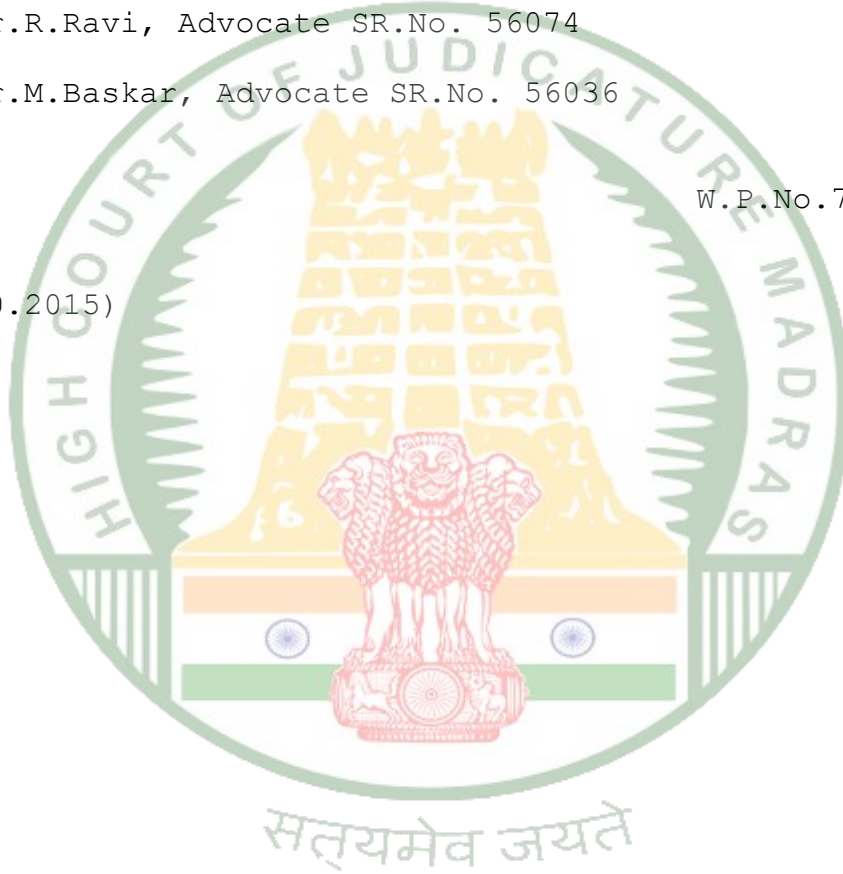
The Deputy General Manager (LPG),
Tamil Nadu State Office,
Indian Oil Corporation,
Marketing Division,
Southern Region, Indian Oil Bhavan,
139, Mahatma Gandhi Road,
Chennai - 34.

1 CC to Mr.R.Ravi, Advocate SR.No. 56074

1 CC to Mr.M.Baskar, Advocate SR.No. 56036

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PPA (CO)
PSI (26.10.2015)



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