

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2016

CORAM

THE HONOURABLE MR. **JUSTICE R.SUBBIAH**

W.P.No.31061 OF 2013 &

W.P.No14724 OF 2014

M/s.Chemozhi Agency,
represented by Mrs.Byeroja Begum,
W/o.Mustafa,
No.221, Periar Pathai,
Choolaimedu,
Chennai 600 094.

.. Petitioner in both W.Ps.

Vs

1. Bharat Petroleum Corporation Ltd.,
(A Government of India Enterprise)
represented by its Territory Manager (Retail)
35, Vaidyanathan Street,
P.B.No.1152, Tondiarpet,
Chennai 600 081. ... 1st respondent in both Wps.
2. The Assistant Manager (Sales)
Bharat Petroleum Corporation Ltd.,
(North Chennai),
No.35, Vaidyanathan Street,
P.B.No.1152, Tondiarpet,
Chennai 600 081 ...2nd respondent in
W.P.No.31061 of 2013 &
3rd respondent in
W.P.No.14724 of 2014
3. Territory Manager (Retail)
Bharat Petroleum Corporation Ltd.,
(A.Government of India Enterprise)
No.35, Vaidyanathan Street,
P.B.No.1152, Tondiarpet,
Chennai 600 081. .. 2nd respondent in
W.P.No.14724 of 2014

Prayer in W.P.No.31061 of 2013: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Mandamus to direct the respondents to remove the seal in the petitioner's outlet at No.221, Periyar Pathai, Choolaimedu, Chennai 600 094 and permit the petitioner to resume the business.

Prayer in W.P.No.14724 of 2014: Writ Petition filed under Article 226 of Constitution of India praying for issuance of writ of Certiorari to call for the records relating to the impugned proceedings in CHTR.41.78 dated 18.03.2014 on the file of the first respondent and quash the same.

For Petitioners : Mr.V. Selvaraj

For Respondents : Mr.O.R.Santhanakrishnan (R1&R2)
Standing counsel

COMMON ORDER

The petitioner has filed the W.P.No.31061 of 2013 seeking for issuance of mandamus upon the respondents to remove the seal in the petitioner's outlet at No.221, Periyar Pathai, Choolaimedu, Chennai-94 and permit him to resume the business.

2. According to the petitioner, the petitioner company is a dealer of respondent Corporation Limited and a retail outlet at No.221, Periyar Pathai, Choolaimedu was given to the petitioner for a period of 15 years commencing from 30.1.2010 and the same is

renewable periodically for a further period of 5 years. The petrol outlet has been periodically inspected by the officials.

3. It is the case of the petitioner that the 2nd respondent, on inspecting the retail outlet on 24.6.2013 suspended the sales and also sealed the outlet of the petitioner pointing out some major deviations such as stock variation and density variation beyond permissible limits and on 25.6.2013, the 2nd respondent viz., the Assistant Manager (Sales) sent a letter to petitioner seeking explanation for the same. Again on 28.6.2013, the 2nd respondent sent a letter stating that he visited the outlet on 28.6.2013 and sought explanation for not maintaining certain samples. Further on 08.07.2013, the 2nd respondent sent another letter stating that the samples drawn from the petitioner's retail outlet on 24.6.2013 were sent to Tondiarpet QA Laboratory for testing and that as the samples failed to meet the requirements, he sought for explanation within 15 days.

4. It is the grievance of the petitioner that the samples were not taken from the petrol outlet and sent for testing in accordance with law and procedure contemplated and the letters dated 25.6.2013 , 28.6.2013 and 08.07.2013 clearly establish that the 2nd respondent

has been acting arbitrarily and vindictively. As the 2nd respondent has sealed the petroleum outlet, the business of the petitioner has been stopped resulting in huge loss to the petitioner. Hence , with no other alternative , the petitioner has filed the writ petition W.P.No.31061 of 2013 seeking for a direction to remove the seal in the petitioner's outlet and permit the petitioner to resume the business.

5. When the writ petition W.P.No.31061 of 2013 was taken up for hearing before this Court on 14.3.2015, Status quo was ordered to be maintained as on date. When the W.P.No.31061 of 2013 is pending, the dealership of the petitioner was terminated by the 1st respondent vide its communication dated 18.3.2014, made in CHTR.41.78 and aggrieved against the impugned communication, the petitioner has filed the Writ Petition in W.P.No.14724 of 2014 to quash the impugned proceedings in CHTR 41.78 dated 18.3.2014 on the file of the first respondent and when the W.P.No.14724 of 2014 came up for hearing before this Court, this court has ordered status quo to be maintained by both parties following the earlier order passed by this Court on 14.3.2014 in W.P.No.31061 of 2013 .

6. Today, when both the writ petitions are taken up for

consideration, learned counsel appearing for the respondents submitted that subsequent to filing of W.P.31061 of 2013, the impugned communication dated 18.3.2014, terminating the dealership agreement of petitioner company came to be issued. Therefore, the prayer sought for in the Writ Petition in W.P.No.31061 of 2013 has become infructuous as the impugned communication of termination superseded the prayer in that writ petition. Further earlier order. Further learned counsel for the respondents has also submitted that as against the order of termination of dealership, the petitioner is having an alternate remedy of preferring appeal before the Executive Director (Retail) in the Head Quarters or any other ED level officer at the Head Quarter so nominated by the Company as per clause 8.9 Appellate Proceedings of Marketing Discipline Guidelines issued for Retail outlet dealership/superior kerosene oil dealership of Public Sector Marketing Companies. Therefore, the petitioner has to seek appropriate remedy by filing an appeal before the concerned appellate authority.

7. Learned counsel for petitioner has also admitted the same and sought for liberty to raise all the grounds raised in this Writ Petition before the appellate authority.

8. In view of the submissions made on either side, this Court is constrained to pass the following order.

9. The petitioner is at liberty to file an appeal before the concerned appellate authority within a period of one week from the date of receipt of a copy of this order and on filing such appeal, the respondents are directed to dispose the appeal on merits and in accordance with law within a period of six weeks thereafter. Till such time, the respondents are directed to maintain Status quo as on date. The petitioner is also at liberty to raise all the grounds that has been raised in these writ petitions before the appellate authority.

10. Accordingly, both these writ petitions are disposed of . No costs. Consequently, connected miscellaneous petitions are closed.

23.02.2016

msr

Index:Yes/No

Internet:Yes/No

Note: Issue order copy by 26.2.2016

To

1. Bharat Petroleum Corporation Ltd.,
(A Government of India Enterprise)
represented by its Territory Manager (Retail)
35, Vaidyanathan Street,
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2. The Assistant Manager (Sales)
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No.35, Vaidyanathan Street,
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Chennai 600 081

**issue order copy on
26.2.2016**

R. SUBBIAH, J.

msr

**W.P.No.31061 OF 2013 &
W.P.No14724 OF 2014**

23.02.2016