

Reserved on : 20.09.2016

Delivered on : 29.09.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.09.2016

CORAM:

THE HON'BLE Mr. JUSTICE M.DURAI SWAMY

**W.P.No.35310 of 2015
and M.P.Nos.1 to 4 of 2015**

Sri Venkateswara Service Station
a registered Firm by its Managing Partner
K.G.Loganathan,
No.265/1, CP Manali Express Highway Road,
Sathangadu, Manali,
Chennai - 600 068.

... Petitioner

Vs.

1.Bharat Petroleum Corporation Ltd.,
rep by its Territory Manager (Retail),
35, Vaidyanathan Mudali Street,
Tondiarpet, Chennai - 600 081.

2.Bharat Petroleum Corporation Ltd.,
rep by its Chief Divisional Manager,
1, Ranganathan Gardens,
Anna Nagar,
Chennai - 600 040.

... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the respondents viz., the order of termination of dealership dated 16.10.2015 issued vide ref. No.CHTR.41.49 issued by the 1st respondent and quash the same and direct the resumption of sales and supplies of the petroleum

products to the petitioner's outlet at No.265/1, CP Manali Express Highway Road, Sathangadu, Manili, Chennai - 600 068 in accordance with Dealership Agreement dated 01.11.1995.

For Petitioner : Mr.R.Thiagarajan

For Respondents : Mr.O.R.Santhanakrishnan

ORDER

The above Writ Petition has been filed by the petitioner to issue a writ of certiorarified mandamus to call for the records viz., the order of termination of dealership dated 16.10.2015 issued by the 1st respondent and to quash the same and direct the resumption of sales and supplies of the petroleum products to the petitioner's outlet in accordance with Dealership Agreement dated 01.11.1995.

2.The petitioner seeks to challenge the order of termination of his temporary dealership by termination order dated 16.10.2015 in this Writ Petition.

3.It is not in dispute that he was appointed as temporary dealer at Sathangadu on 01.11.1995 ending with 01.05.1996. While so, on 01.11.2000, an inspection was done at the retail outlet and samples of MS and HSD were taken. In the inspection, stock variation was found in MS and HSD in the retail outlet. Therefore, on 04.11.2000, the respondents issued a show

cause notice calling for explanation from the petitioner. Pursuant to the stock variation, the sales and supplies were suspended for a period of 45 days commencing from 01.11.2000 to 15.12.2000. The samples taken from the retail outlet were sent to laboratory for tests. By the report dated 28.11.2000, it was found that the samples submitted for laboratory test had failed.

4. On 22.11.2000, the petitioner filed a Civil Suit in C.S.No.880 of 2000 before the Original Side of this Court for the following reliefs:

- a) Declaration that the notice of suspension dated 01.11.2000 is illegal and void;
- b) Mandatory injunction to resume supplies of petroleum products at the retail outlet;
- c) Mandatory injunction for permission to sell petroleum products at the retail outlet;
- d) Permanent injunction restraining the Corporation from cancelling adhoc dealership in respect of the retail outlet except in accordance with law.

In the said suit, the petitioner also filed applications praying for interim injunction, interim mandatory injunction and for direction. In the Original Application in O.A.No.1083 of 2000, an order of interim injunction was granted restraining the respondents herein from cancelling the temporary

dealership, except in accordance with law. On 15.12.2000, final orders were passed in O.A.Nos.1082, 1083 of 2000 and A.No.4992 of 2000 in C.S.No.880 of 2000. The operative portion of the final order reads as follows:

- 1) The plaintiffs are directed to remove the petroleum products stored in the underground tanks and make them suitable for receiving the new petroleum products from the defendants;
- 2) The plaintiffs are directed to make the necessary payments before getting supply of the petroleum products;
- 3) The plaintiffs should file an affidavit of undertaking before this Court that they would sell the petroleum products in the condition in which it was received by them and they would not indulge in any other illegal acts;
- 4) The defendants are restrained from cancelling the dealership of the plaintiffs till the disposal of the suit, but, however, this will not be a bar if and when the plaintiffs in future violates the terms and conditions of the agreement.

5. Against the order passed in O.A.No.1083 of 2000 in C.S.No.880 of 2000, the respondents herein filed an appeal in O.S.A.No.67 of 2001 and the appeal was disposed of as infructuous. The respondents herein filed an application in A.No.6094 of 2009 in C.S.No.880 of 2000 to dismiss the suit as having become infructuous, since the temporary dealership has come to an end by efflux of time. Subsequently, the suit in C.S.No.880 of 2000 was

transferred to the file of the III Additional Judge, City Civil Court and re-numbered as O.S.No.719 of 2011. The application in A.No.6094 of 2009 was re-numbered as I.A.No.7006 of 2011. The trial Court allowed the application in I.A.No.7006 of 2011 and dismissed the suit in O.S.No.719 of 2011 on 13.12.2013. Against which the petitioner herein filed a Civil Revision Petition in C.R.P(NPD).No.1325 of 2014 and this Court by order dated 04.04.2014, while disposing of the Civil Revision Petition has observed as follows:

“ ...

After taking the samples, the same was sent for analysis to the lab. As per the procedure, alongwith the analysis report, a show cause notice is required to be given to the petitioner and after getting reply, the respondents, if they are satisfied with the reply should have dropped the proceedings or otherwise to continue the proceedings and to take it for logical end. In this case, upto taking the samples and sending the same to lab was already done and what is required to be done is to conclude the already initiated proceedings. Therefore, interest of justice requires that the petitioner should be allowed to continue the business as long as the proceedings initiated, as stated above is concluded. Therefore, the order of the trial Court is set aside and the suit is decreed in respect of prayer (d) and consequently, (b) & (c) are also granted. It is open to the respondents to continue with the proceedings which they have already initiated by issuance of suspension

order dated 01.11.2000 and thereafter, pass appropriate orders.”

6. Against the order passed in the Civil Revision Petition in C.R.P.(NPD).No.1325 of 2014, the respondents herein filed an appeal before the Hon'ble Supreme Court of India in Special Leave to Appeal (C) No.24017 of 2014 and the Hon'ble Supreme Court dismissed the Special Leave Petition by order dated 15.09.2014 and observed as follows:

“Heard learned senior counsel for the petitioners and perused the relevant material.

We do not find any legal and valid ground for interference. The Special Leave Petition is dismissed with liberty to the petitioners to take appropriate action in accordance with law as it may be advised.”

7. On 06.06.2014, the respondents/Corporation issued a show cause notice, enclosing a copy of the lab report. In the lab report, RON was recorded as 67.5 as against the permissible limit of 88. The petitioner sent a reply dated 19.06.2014 stating that there is no violation of terms and conditions and that they will initiate contempt against the Corporation for issuance of show cause notice. Subsequent to the dismissal of the Special Leave Petition on 15.09.2014 with liberty to take action in accordance with law, the respondents/Corporation sent a letter dated 13.02.2015 calling for

explanation from the petitioner-dealer. The petitioner sent their reply dated 20.02.2015 stating that they have not violated the terms and conditions of the temporary dealership agreement. Not satisfied with the explanation given by the petitioner, by order dated 16.10.2015, the respondents/Corporation terminated the temporary dealership.

8.Mr.R.Thiagarajan, learned counsel appearing for the petitioner submitted that the termination order dated 16.10.2015 passed by the respondents is in clear violation of the order passed in the Civil Revision Petition in C.R.P.(NPD).No.1325 of 2014 and that the petitioner had not violated the terms of the adhoc Dealership Agreement. Further, the learned counsel submitted that the termination order dated 16.10.2015 is vitiated for non-observance of the principles of natural justice.

9.In support of his contention, the learned counsel relied upon the judgment reported in **2010 (3) CTC 591 [Babu Filling Station, represented by N.Babu, 1268, Cuddalore Road, Vridhachalam, Cuddalore Vs. 1.The Divisional Retail Sales Manager, Indian Oil Corporation Limited, Trichy Divisional Office, Women SIDCO Industrial Estate, Vazhavanthakottai, Trichy and others]** wherein this Court held as follows:

“ ...

12. Clause 7 of the Regulations deals with power of search and seizure. It says that any Gazetted Officer of the Central Government or State Government or any Police Officer not below the rank of Deputy Superintendent of Police duly authorised by the general or special order by the Central Government or State Government or any officer of the Oil Company not below the rank of Sales Officer may conduct the search and take samples of the product. The authorised officer spoken to is not the Oil Company herein and hence, when sub clause (6) of Clause 8 speaks about communication by an authorised officer, going by the ambit of the authority of the authorised officer and the purpose of a search and seizure, the test result has to be communicated in writing only. The contention that the provision does not rule out an oral communication; hence cannot be accepted at all. It is not denied by the respondent that an aggrieved party can seek re-testing of the sample, should there be any doubt about the results which may be prejudicial to him. Going by the purport of the test and read in the context of the right of respondents-1 and 2 to terminate the agreement, when sub clause (6) contemplates a communication of the test result to the dealer or transporter or concerned person and the Oil Company, the communication has to be read in the context of what is to fall for consideration of the test results for an appropriate action to be taken. In the above circumstances, when the law contemplated that a drastic action could be taken by the oil company as against a dealer leading to cancellation of

dealership, then the procedure prescribed has to be strictly adhered to. In the light of the provisions contained in Clause 8, the facts need to be seen.

13. It is not denied by respondents 1 and 2 herein that the date of even the oral communication of the test report could not be stated. It is not denied by respondents-1 and 2 that the petitioner was not intimated about the test result as contemplated under Clause 8 (6). However, learned counsel appearing for respondents-1 and 2 maintains that with the oral communication made to the petitioner, he cannot contend that the respondent had violated the compliance of the Regulations. Pointing out to the difference in the language of Sub clause (5) and (6), he contended that under sub-clause (5), the laboratory has to "furnish" the test report to the authorised officer. Sub-clause (6) speaks about the "communication" of the test result by the "authorised officer". In the circumstances, he pointed out that one cannot contend that the non-communication of the test result in writing would be fatal to the case of the respondents. It must be noted herein that the Regulations contemplate communication only from the "authorised officer", the said person being one as defined under Clause 2(b) and Clause 7 to the dealer or transporter or concerned person and the oil company and not from the oil company to the dealer. In the circumstances, when the Section is very specific as to the communication to the dealer as well as to the oil company, it stands to reason that the communication contemplated has to be made in a manner that would advance the purpose of search and seizure. On the

admitted facts that there was failure of the compliance of Clause 8(6) of the Regulations and that the petitioner was communicated of the results only along with the termination order, it is clear that there was non-compliance of the Regulations which touches on the validity of the termination of the contract.

...

17. In this regard, I have no hesitation in holding that the learned Arbitrator failed to consider the terms of the notification which protects the right of the parties herein, particularly when the allegation as regards the termination rests on the failure to maintain the standards, leading thereby to the charge on adulteration. In this regard, the reliance placed by the petitioner to the decision of the Andhra Pradesh High Court reported in *Premodaya rep. by its Managing Director Vs. Bharat Petroleum Corporation Limited, 2008 (6) ALT 550*, needs to be noted. The learned Judges pointed out that Table I Schedule I of the Control Order gives requirements for petrol. There are 12 characteristics of petroleum products which are standard. If any foreign substance is introduced and is shown as responsible for adulteration, then it is open to the Oil Company to take such actions as are contemplated under the contract. Pointing out to the test report that there are deviations in the value of RON, the learned Judges held that the action of the Oil Company in suspending the supplies was illegal. The test report in that case pointed out to the variation in RON reading. The respondent-company issued a notice enclosing the test report

that the sample taken did not meet the specifications of RON and hence, the dealer was visited with penalty. In the context of the allegation that the sample did not match the RON specifications, learned Judges pointed out that there was no proven case of adulteration. Learned counsel made reference to the decision reported in ***Chirag Keshaw Service Station Vs. the Bharat Petroleum Corpn. Ltd., 2008 (56) BJRJ 1114***, wherein the Patna High Court held that the mere variation in RON test, by itself, cannot be a conclusive proof for adulteration; consequently, the cancellation was held to be bad. In the background of the above-said decisions and the decision reported in ***M/s.Pt.Munshi Ram & Associates (P) Ltd. Vs. Delhi Development Authority and another, ILR 2002 1 Delhi 56*** one can draw an inference that in a case of allegation of malpractice, particularly based on the charge of adulteration flowing from the fact that the sample test did not satisfy the RON count, it is necessary that the respondent company has to act in all fairness to the rights of the parties and the same has to be done only by following the Regulations strictly, by going in for checking the samples from the outlets. But in so checking, drawing a sample and taking the test check, the Rules clearly prescribe the procedure to be followed in the presence of the dealer's representatives and thereafter, based on the test report communicated to the dealer as well as to the oil company depending on the results, further action could be taken. In the light of the above said facts, going through the decisions relied on by the learned counsel appearing for the petitioner, one can only draw a

conclusion that if the test conducted has to have a meaning, particularly in the context of a deliberate act of adulteration leading to the termination of the licence, the respondent has to necessarily observe the Regulations strictly.

18. Learned counsel appearing for the petitioner also made reference to the extract about RON, apart from the decisions reported in *Bhatia Service Station and another Vs. Indian Oil Corporation and another*, 2004 72 DRJ 491 as well as *Suneet Services Vs. Bharat Petroleum Corporation Ltd. and others*, 2003 4 JCR 267 (Jrh); *Hirak Point, Dealer and Bharat Petroleum Corporation Ltd. Vs. Bharat Petroleum Corp. Ltd. and others*, 2003 (1) JCR 315 (Jhr); *Bharat Filling Station and another Vs. Indian Oil Corporation Ltd.*, 2003 III AD (Delhi) 694 and *Dharam Chand Gupta Vs. Indian Oil Corporation Ltd. and others*, 130 (2006) DLT 102 on the effect of non-compliance of the Regulations and its effect on the termination of the licence based on the allegation of adulteration. Having regard to the established principle of law that violation of the observance of the Regulations or the procedure would be fatal to the invoking of a termination clause in an agreement, it is not necessary for me to go in detail with the above-said decisions. The sum and substance of the law declared in all these cases are that having regard to the nature of allegations on adulteration, the test report necessarily has to be enclosed and communicated to the dealer at the earliest point of time, so that the compliance of the Regulations is absolute and unexceptionable.

...

20.A reading of the decisions relied on by the respondents, no doubt, show that the report substantiates the allegation as to adulteration to result in penal consequences including termination. However, when apart from Section 20 of the Petroleum Act, Marketing Discipline Guidelines of 2005 as well as the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005, contemplate communication of the test result to the dealer to seek a re-testing of the sample taken, and in this case, when admittedly the test report was given only along with the order of termination, the view of the learned Arbitrator goes against the Regulations which bind the respondent. Consequently, the award suffers a legal infirmity; hence, liable to be set aside by this Court. Consequently, I have no hesitation in setting aside the award, particularly with reference to the finding that the respondents had acted in terms of the contractual obligations.”

10.Countering the submissions made by the learned counsel for the petitioner, Mr.O.R.Santhanakrishnan, learned counsel appearing for the respondents submitted that the termination order dated 16.10.2015 was passed by the respondents in accordance with law as observed by the Hon'ble Supreme Court in the Special Leave to Appeal (C) No.24017 of 2014 and in the Civil Revision Petition in C.R.P.(NPD).No.1325 of 2014. Further, the learned counsel submitted that since the temporary Dealership

Agreement had expired by efflux of time, the petitioner has no right to continue as dealer of the respondents' petroleum products for indefinite period. Further, the learned counsel submitted that the lab report dated 28.11.2000 sent to the petitioner along with the show cause notice dated 06.06.2014 would establish that the samples taken from the petitioner's retail outlet had failed in the lab test. As per the lab report, RON was only 67.5 when compared to the minimum requirement of 88.

11.Further, the learned counsel for the respondents/Corporation submitted that as per Section 20 of the Petroleum Act, 1934, the owner of any petroleum, or his agent, who is dissatisfied with the result of the test of the petroleum may, within seven days from the date on which he received intimation of the result of the test, apply to the officer empowered under Section 14 to have fresh samples of the petroleum taken and tested. Since the petitioner failed to apply as per Section 20 of the Petroleum Act, he cannot now dispute the correctness of the lab report dated 28.11.2000. Further, the learned counsel relied upon Section 201 of the Indian Contract Act and Section 14 of the Specific Relief Act.

12.In support of his contentions the learned counsel relied upon the following judgments:

(i)AIR 2004 SC 2093 [Shipping Corporation of India Ltd. Vs. Machado Brothers and others] wherein the Hon'ble Supreme Court held as follows:

“25.Thus it is clear that by the subsequent event if the original proceeding has become infructuous, ex debito justitiae, it will be the duty of the court to take such action as is necessary in the interest of justice which includes disposing of infructuous litigation. For the said purpose it will be open to the parties concerned to make an application under Section 151 of CPC to bring to the notice of the court the facts and circumstances which have made the pending litigation infructuous. Of course, when such an application is made, the court will enquire into the alleged facts and circumstances to find out whether the pending litigation has in fact become infructuous or not.

...

28.Therefore, in our opinion, the courts below erred in continuing an infructuous suit just to keep the interlocutory order alive which in a manner of speaking amounts to putting the cart before the dead horse.

...

31.For the reasons stated above, we are of the opinion that continuation of a suit which has become infructuous by disappearance of the cause of action would amount to an abuse of the process of the court and interest of justice requires such suit should be disposed of as having become infructuous. The application under Section 151 of CPC in this

regard is maintainable.”

(ii)(2009) 5 MLJ 1315 [Kurshed Sharfudeen and another Vs. IBP Company Limited having its Regional Office at No.10, Mayor Ramanathan Road, Chetpet, Chennai and others] wherein a Division Bench of this Court held as follows:

“ ...

59.2.It is further seen that, by subsequent order dated 26.2.2006, the second respondent has given further period of one year to the second appellant with effect from 28.2.2006 or till completion of one year or such date by which a regular dealer is appointed, whichever is earlier and to that effect also there has been an undertaking given by the second appellant. In such circumstances, when the period of dealership has come to an end as early as 27.2.2007, especially when the second respondent has already granted dealership to the 4th respondent by way of regular dealership, there is no vested right on the part of the appellants to claim permanent dealership. In view of the same, as rightly pointed out by the learned single Judge, the question of principles of natural justice does not arise. Therefore, the writ appeal fails and the same is dismissed.”

(iii)(2002) 1 MLJ 740 [M/s.Swamy Service Station represented by its Partner Mr.S.P.Muthukumaraswamy, Chennai Vs. Bharat Petroleum

Corporation Limited, represented by its Managing Director, Mumbai and another] wherein this Court held as follows:

“11. *In krisn Kumar v. Senior Superintendent of Police, Bulandshaur 1998 A.I.H.C. 4581*, the Division Bench of the Allahabad High Court held that the report of analysis submitted by any of the laboratories enumerated in the control order is conclusive and is admissible without any formal proof. The learned Judges had given detailed reasoning as to why even the density of the adulterated product conforms to the prescribed standards, it is possible for the product to be adulterated and “the introduction of the foreign substance in petrol or diesel illegally/unauthorisedly simplicitor would amount to adulteration even though the product may conform to density standard as mentioned in Schedule I of the control order”. This judgment also answers the grievance expressed on behalf of the petitioners that there is no way of ensuring that the products supplied was in the first place according to specifications. The following paragraph is relevant:

“The Government Corporations are not expected and will not supply sub-standard or adulterated material and it can be presumed that the product supplied by theme would be pure and would conform to the standards laid down by Indian Standards Institution. The dealer is only required to maintain the product in the same condition in which he had received it. There is no compulsion on anyone to get a dealership of petrol or diesel. Any one who wants to be appointed as a dealer of an oil company does so by his own

choice and after becoming a dealer he cannot be heard to complain that the control order by which he is governed does not give him a second opportunity to get the sample analysed again”.

...

24.Mr.Venkataraman learned counsel for the petitioner in C.R.P.No.2868 of 2001 would submit that if the density reading is correct, then there is no possibility of failing the RON test. These are areas of special knowledge and there is no basis for such assertion. At this stage, the Court will only have to go by the lab results. The agreement has been typed in the paper book and one of the covenants imposed on the petitioners is not to adulterate the **petroleum** products. This is Clause 10(g) and Clause 10(k) is to abide by the prevailing Act and regulations. The respondent has covenanted to supply motor spirit or high speed diesel and other **petroleum** products provided the dealer faithfully observes and performs his part of the agreement. This is Clause 11(C). Clause 12 provides for termination of the license without assigning any reason what so ever by either party giving to the other not less than 90 days notice in writing. Sec.3 provides for termination of agreement forthwith if the dealer or licensee is guilty of a breach of any of the covenants and stipulations on their part. Therefore, it is clear that the agreement provides for a unilateral right of termination and in such cases, the Courts have also upheld that the mere fact that there is an unfettered right to terminate the agreement is not by itself sufficient to hold the contract as

void. It was pointed out in these revisions that the petitioners alone had been singled out for such vindictive action and not anyone else. This was denied by the respondents. In the absence of other materials apart from the ipse dixit of the petitioners, it is difficult to hold that the respondents have acted vindictively or maliciously. The question whether the product supplied by the respondents was free from adulteration and whether there was scope for some malpractice, is answered in *Jenarthana, B v. The Senior Regional Manager, Hindustan Petroleum Corporation (2000) 1 L.W. 502*. The relevant extract is in para 11 supra wherein it was held that Government Corporations are not expected and will not supply sub-standard or adulterated material and it can be presumed that the product supplied by them would be pure and would conform to the standards laid down by Indian Standards Institution.

...

28. In C.R.P.No.2868 of 2001, no allegation has been made that they have filed suites for the same relief in several Courts. The reading also shows that there is only marginal variation in the test result. The RON reading of this petitioner's sample is 85.7 as against the minimum of 88. But here again, it is not possible to grant any relief to the petitioner on the ground of marginal difference since as held by the Division Bench of the Kerala High Court, these are areas where Courts have to apply the strict standards specified by the persons who are equipped to do so. The other ground urged was that even assuming without admitting that the petroleum samples were

adulterated, that stock has long been exhausted and there is fresh stock in the outlet now and therefore, there was no justification to stop the supply at this stage. It is not possible to accept this argument since the agreement provides for action being taken by the Corporation if there is adulteration. The terms of the agreement cannot be ignored by saying that since in any event the adulterated product has already been supplied to the general public, no harm will be done now.

...

31. When the various judgments both reported and unreported of this Court have consistently held that the **lab reports** are conclusive proof and injunction cannot be granted for continuance of supply, it will be improper to set aside the order of the Court below. The C.R.Ps are therefore dismissed. No costs.”

(iv) An unreported order of this Court dated 05.06.2014 made in

W.P.No.20210 of 2009 wherein this Court held as follows:

“...

In any event, as of now, when the period of one year contract was already over, the question of giving a direction to the respondents to renew the contract does not arise. In support of his submissions, he has also placed on record two of the judgments of this Court, namely, one unreported order passed in W.P.No.22423 of 2009 dated 15.03.2010 (T.Manoharan V. The Senior Regional Manager, Hindustan Petroleum Corporation Ltd. and two others] to say that every

contract has to be awarded as per the notification for a period of only one year, but, after the expiry of time, no prayer for extension should be considered and yet another reported judgment in the case of Kurshed Sharfudeen and another V. IBP Company Limited and others reported in (2009) 5 MLJ 1315. Learned counsel for the respondents, highlighting the ratio laid down by this Court, submitted that when the period of dealership has come to an end, there is no vested right on the part of the petitioner to claim permanent dealership. In view of that, the petitioner cannot complain any violation of the principles of natural justice, as the question of principles of natural justice does not arise.

5. This Court, finding force in the submission made by the learned counsel for the respondents, by keeping in mind clause-7 of the agreement for maintenance and handling, which is given as under,

“7. The Agreement will be for a period of one year with effect from 31.12.2008. The Corporation at its option, may renew the Agreement for a further period of one year. However, the Agreement may be terminated at the option of the Corporation by giving one month's notice to the Labour Contractor without assigning any reason therefor. The Agreement may be terminated by the Labour Contractor by giving three months notice in writing to the Corporation of its intention to terminate this Agreement.””

13. On a careful consideration of the materials available on record

and the submissions made by the learned counsel on either side and also the judgments relied upon by the learned counsel on either side, it is not in dispute that the petitioner was given temporary dealership for selling petroleum products of the respondents'/Corporation at Sathangadu for the period from 01.11.1995 ending with 01.05.1996. The respondents conducted an inspection on 01.11.2000 and samples were taken in respect of MS and HSD on the said date. Further, stock variations in MS and HSD were found in the petitioner's retail outlet. The sales and supplies were suspended for a period of 45 days from 01.11.2000 to 15.12.2000 and a show cause notice was sent to the petitioner on 04.11.2000. The samples taken from the retail outlet were sent to the laboratory for tests. On 28.11.2000, QC Lab submitted the test report, wherein it was observed that RON was only 67.5 compared to the minimum requirement of 88. Subsequently, the petitioner filed a suit in C.S.No.880 of 2000, which was before the Original Side of this Court and subsequently, transferred to the III Additional Judge, City Civil Court and re-numbered as O.S.No.719 of 2011.

14.An application was filed by the respondents/Corporation in I.A.No.7006 of 2011 to dismiss the suit as having become infructuous since the temporary dealership had come to an end by efflux of time. The trial Court allowed the application in I.A.No.7006 of 2011 and dismissed the suit

in O.S.No.719 of 2011 on 13.12.2013. Against which the petitioner herein filed a Civil Revision Petition in C.R.P(NPD). No.1325 of 2014 under Article 227 of the Constitution of India. This Court, by order dated 04.04.2014, disposed of the Civil Revision Petition by observing that upto taking the samples and sending the same to lab was already done and what is required to be done is to conclude the already initiated proceedings. Therefore, in the interest of justice, this Court, allowed the petitioner to continue the business as long as the proceedings initiated, as stated above is concluded. Further, this Court decreed the suit in respect of prayers (b), (c) and (d) Further, this Court observed that it is open to the respondents/Corporation to continue with the proceedings which they have already initiated by issuance of suspension order dated 01.11.2000 and thereafter, pass appropriate orders. The order passed by this Court in the Civil Revision Petition in C.R.P(NPD).No.1325 of 2014 was confirmed by the Hon'ble Supreme Court and by order dated 15.09.2014, the Apex Court gave liberty to the respondents/Corporation to take appropriate action in accordance with law.

15. So far as prayers (b) and (c) in the suit in O.S.No.719 of 2011 are concerned, they relate to issuance of mandatory injunction to resume supply and permit to sell petroleum products at the retail outlet; prayer (d)

relates to granting permanent injunction restraining the Corporation from cancelling adhoc dealership in respect of retail outlet, except in accordance with law. Therefore, from the reading of the order passed by this Court in the Civil Revision Petition and the order passed by the Hon'ble Supreme Court in the Special Leave Petition, it is clear that the respondents were not prevented from taking appropriate action in accordance with law. Further, this Court, while disposing of the Civil Revision Petition observed that taking the samples and sending the same to lab was already done and what is required to be done is to conclude the already initiated proceedings. Therefore, after the disposal of the Civil Revision Petition and the Special Leave Petition, the respondents/Corporation issued a fresh show cause notice dated 13.02.2015. The petitioner sent their reply dated 20.02.2015 in response to the show cause notice dated 13.02.2015. Since the explanation offered by the petitioner was not accepted by the respondents, the temporary dealership granted to the petitioner was terminated for the following reasons:

“The explanation offered by you is not at all acceptable by us and the temporary dealership granted to you stands terminated for the following reasons:

“(a) Failure of samples taken from the retail outlet failed in the lab test held on 28.11.2000 by BPCL Tondiarpet Lab, which is notified by Government in Official Gazette. The act of failure of samples is in gross violation of

Clause 19(iv) of Temporary Dealership Agreement dated 01.11.1995.

(b) Since your dealership has come to an end by efflux of time, there is no contract or license granted to you by the Corporation to deal with our products and services to our valued customers. You are operating the Retail outlet owned by this Corporation purely on temporary basis and due to your filing various vindictive litigations with a malafide intention to squat over the property owned by the Corporation and dealing with our products and services without any authorization/License. The Retail outlet being the owned property of the Corporation, the Corporation can only have the right and authority to plan and operate the said Retail Outlet in the way it was planned keeping in mind its commercial interest and customer expectation. You can not squat over the said property forever without a valid license or authorization. The temporary dealership was awarded to you when you were operating as a regular dealer at Thiruvothiyur. But the said dealership was terminated in the year 2003 due to your committing serious breaches of the Dealership Agreement. Once the main dealership is terminated, the operation at the adhoc dealership come to an end automatically. But you continued to operate the same due to your filing multiple legal proceedings and by which restrained and prevented the Corporation from doing so. Consequently, we hereby terminate the Adhoc Dealership dated 01.11.1995 forthwith. In view of the termination of the temporary dealership, you are not entitled to enter on the premises belonging to the Corporation

and or to use the sales room, pumps and tanks and all other facilities constructed and / or installed by the Corporation on the said land at its own cost and if you do so, you will be treated as a trespasser and appropriate action will be taken against you.

Our Sales Officer Mr.N.Srinivasa Rao, Executive Sales, will be at the retail outlet on 17th day of October 2015 at 09:00 A.M when you are requested to be present to complete the exercise of stock inventory and complete the other formalities. Any stock laying at the RO shall be accounted subject to its quality parameters and necessary credit entry shall be passed on to your statement account. You are also free to remove the materials belonging to you which you might have kept at the retail outlet of the Corporation. If you fail to remove the said materials at the aforesaid time, the same will be kept at your risk and cost and will be handed over the you as and when demanded by you.

This is without prejudice to any other right which the Corporation may have against you under the Temporary Dealership granted to you vide our letter dated 01.11.1995.”

16.Bharat Petroleum Corporation being a Corporate Sector cannot permit anyone to bring disrepute to the name and goodwill of the Corporation and for the interest of the general public and the Corporation cannot be a silent spectator and on the other hand, it is the duty of the

Corporation to correct the situation and dealer in order to serve the general public, which is expected of by them.

17. In the appeal in O.S.A.Nos.67 & 68 of 2001 preferred against the order passed in O.A.Nos.1083 & 1081 of 2000 in C.S.Nos.880 & 881 of 2000, the Division Bench of this Court observed as follows:

“in view of the fact that the Dealership Agreement has come to an end by efflux of time and the agreement is no more in force, we are not deliberating on the issue raised in O.S.A.No.67 of 2001, which became infructuous.”

18. When the respondents/Corporation was not prevented from concluding the already initiated proceedings, the contention of the petitioner that the termination of the dealership is contrary to the order passed in the Civil Revision Petition cannot be accepted. The termination order dated 16.10.2015 has been passed only after the issuance of show cause notice dated 20.02.2015. That apart, as per the provisions of Section 20 of the Petroleum Act, the petitioner, if he is dissatisfied with the result of the test of the petroleum products, should have applied to the Officer empowered under Section 14 within seven days from the date on which he received the intimation of the result to have fresh samples of the petroleum taken and tested. In the case on hand, the petitioner has not filed any

application under Section 20 of the Petroleum Act.

19.As per Section 201 of the Indian Contract Act, an agency is terminated but he principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors. As per Section 201, an agency can be terminated by the principal revoking his authority or by the business of the agency being completed. In the case on hand, since the petitioner had violated the terms of the temporary Agreement and also for the reason that the period of dealership had expired, the 1st respondent had terminated the dealership by the termination order dated 16.10.2015.

20.In the judgment relied upon by the learned counsel for the petitioner reported in **2010 (3) CTC 591 [Babu Filling Station, represented by N.Babu, 1268, Cuddalore Road, Vridhachalam, Cuddalore Vs. 1.The Divisional Retail Sales Manager, Indian Oil Corporation Limited, Trichy Divisional Office, Women SIDCO Industrial Estate, Vazhavanthankottai, Trichy and others]**, the test results were

informed to the dealer only along with the order of termination. In such circumstances, the order of termination passed was set aside by this Court. In the case on hand, the lab test reports were enclosed and sent to the petitioner along with show cause notice dated 06.06.2014. Therefore, the said judgment is not applicable to the present case.

21.The ratio laid down in the judgment relied upon by the learned counsel for the respondents squarely applies to the facts and circumstances of the present case.

22.Since the order of termination was passed in accordance with law, I do not find any reason to interfere with the impugned termination order dated 16.10.2015. The Writ Petition is devoid of merits and the same is liable to be dismissed, Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : No
Internet : Yes
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29.09.2016

**M.DURAISWAMY, J.
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To

- 1.The Territory Manager (Retail),
Bharat Petroleum Corporation Ltd.,
35, Vaidyanathan Mudali Street,
Tondiarpet, Chennai - 600 081.
- 2.The Chief Divisional Manager,
Bharat Petroleum Corporation Ltd.,
1, Ranganathan Gardens,
Anna Nagar,
Chennai - 600 040.

**Order made in
W.P.No.35310 of 2015
and M.P.Nos.1 to 4 of 2015**

29.09.2016