

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.773 of 2016

& W.M.P.No.579 of 2016

T.Chezhian

.. Petitioner

Vs.

1. The Union of India,
Rep. by its Secretary to Government,
Ministry of Petroleum and Natural Gas,
Shastri Bhavan, New Delhi-110 001.
2. The Chairman and Managing Director,
The Hindustan Petroleum Corporation Limited,
Third Floor, Petroleum House,
No.17, Jamshedji Tata Road,
Church Gate, Mumbai-400 020.
3. The Chief Regional Manager (LPG),
Hindustan Petroleum Limited,
Petro Bhavan, Third Floor,
New No.82, TTK Road,
Alwarpet, Chennai-600 018.
4. The Senior Regional Manager (LPG),
Hindustan Petroleum Limited,
Petro Bhavan, Third Floor,
New No.82, TTK Road,
Alwarpet, Chennai-600 018.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the fourth respondent in his Ref: CHNLRO/AVK/LPG, dated 22.12.2015 and quash the same and to direct the respondents to convert the existing non-domestic distributorship under agreement, dated 29.06.2011 authorising the petitioner to serve all categories of LPG customers, industrial customers and commercial customers by selling LPG Cylinder of all varieties.

For Petitioner : Mr.A.S.Mujibur Rahman

For Respondents: Mr.K.S.Jeyaganesh, CGSC for R-1
Mr.O.R.Santhanakrishnan for RR-2 to 4

ORDER

The petitioner has filed this Writ Petition praying for issuance of a Writ of Certiorarified Manadamus to call for the records relating to the order passed by the fourth respondent in his Ref: CHNLRO/AVK/LPG, dated 22.12.2015 and quash the same and to direct the respondents to convert the existing non-domestic distributorship under agreement, date 29.06.2011 authorising the petitioner to serve all categories of LPG customers, industrial customers and commercial customers by selling LPG Cylinder of all varieties.

2. The affidavit in support of the Writ Petition is sworn to by the petitioner, who is the Proprietor of Kanyakumari Gas Agency at Nagercoil, stating that the second respondent-Chairman and Managing Director of Hindustan Petroleum Corporation Limited (HPCL) appointed him as non-domestic (ND) LPG retailer for Kanyakumari District to sell NDNE (non-domestic non-essential) packed cylinders. By virtue of the agreement dated 29.06.2011 entered into between the third respondent-Senior Regional Manager of HPCL, the petitioner has been carrying on business in the above said name and style of Kanyakumari Gas Agency. The petitioner came to know that the domestic distributors have been allowed to sell NDNE cylinders to industrial customers. In this regard, Indian Oil Corporation Limited (IOCL), Mumbai issued a Circular in Circular No.SL/TSK/1601, dated 03.10.2011, mentioning the guidelines on issuance of amendatory letter to LPG distributorship agreement and by the said Circular, a clause restraining the LPG distributors from selling NDNE packed LPG to industrial customers, in the distributorship agreement was deleted.

3. It is the further case of the petitioner that as per the Modified Director Benefit Transfer for LPG (MDBTL) Scheme (PAAHAL), now LPG cylinders are supplied to domestic consumers at market rate by the dealers and the subsidy is directly paid into the Bank Account of the customers, and hence, as regards the sale of LPG cylinders, the difference between NDNE cylinders and domestic dealers pales into insignificance and the petitioner states that the HPCL should enable the petitioner to effect and deal in domestic cylinders also by extending the distribution on par with domestic distributors. Hence, the petitioner made a representation to the second respondent on 12.12.2015 requesting to convert his existing NDNE distributorship under the said agreement, dated 29.06.2011 by

authorising the petitioner to serve all categories of LPG customers including domestic customers, industrial customers and commercial customers by selling LPG cylinders of all varieties, domestic, industrial and commercial.

4. The petitioner further states that he has taken up the dealership by spending huge amounts towards infrastructure and logistics facility and also procured licenses from different statutory authorities. It is the grievance of the petitioner that his business has been affected due to the introduction of the above said Circular. The petitioner relies on an order of the Kerala High Court in W.P.(C).No.2113 of 2015, dated 09.11.2015, wherein, in the said Writ Petition filed by a non-domestic distributor under Bharat Petroleum Corporation Limited (BPCL), the Kerala High Court observed that the remedy of the petitioner therein is to invoke the dispute resolution by Arbitration as referred to in the agreement therein, which itself provides for Arbitration in the event of any dispute and therefore, the Court need not consider the issue based on the agreement. The Kerala High Court, while disposing of the Writ Petition, further observed that in respect of the issue based on the conversion, on account of the change of policy in 2011, the Court was of the view that as the request of the petitioner therein was turned down in the year 2010 before advertting to the change of policy, the petitioner therein is free to approach the second respondent therein (BPCL) with fresh representation on account of change of policy in the year 2011 to permit the petitioner to convert non-domestic distribution for domestic purposes, and it was directed that if the petitioner therein makes such a request before the second respondent-BPCL, the same shall be considered within a period of two months from the date of receipt of the request. Based on this order of the Kerala High Court, the petitioner made the abovesaid representation, dated 12.12.2015.

5. Since the fourth respondent has rejected the representation of the petitioner, by the impugned order, dated 22.12.2015, stating that the Kerala High Court order, dated 09.11.2015 is not relevant to the case of the petitioner, as the HPCL is not a party to the said Writ Petition. Challenging the said order, dated 22.12.2015, the petitioner has preferred this Writ Petition for the above relief.

6. The fourth respondent has filed counter affidavit, on his behalf and on behalf of respondents 2 and 3 also, stating that as the petitioner has only been appointed as non-domestic LPG distributor on 29.06.2011 based on the applications called for in the Advertisement, dated 13.10.2009 published in "The Hindu" and "Dina Malar" newspapers. The selection of domestic distributors is through separate guidelines not connected with the selection of NDNE distributorship, which is totally a

different proposition decided by the individual Oil Marketing Companies and the selection process, eligibility criteria, reservation for social objective criteria, etc., are different for both regular and NDNE distributors. NDNE distributors are not stopped from applying for regular and RGGLVY distributorship and in case of selection, they have to surrender the existing NDNE distributorship before issuance of Letter of Intent. Hence, the claim of the petitioner for converting the NDNE distributorship to a regular distributor of LPG, cannot be accepted.

7. It is further stated in the counter affidavit that the distributorship agreement entered into by the petitioner with the fourth respondent is only for commercial and industrial purposes. Hence, the petitioner cannot rely on the Circular, dated 03.10.2011. The non-domestic cylinders are meant to be used for commercial purposes, which are marketed by regular as well as exclusive non-domestic distributors. The petitioner cannot demand the HPCL from stopping the regular distributors in doing commercial cylinders business, as they are guided by the terms and conditions of their dealership agreement. As clarified in the impugned order, dated 22.12.2015, neither conversion from NDNE distributorship to regular/RGGLVY distributorship is possible, nor NDNE distributorship is allowed to cater to the business of domestic cylinders. The cylinders under MDBTL Scheme pertain to domestic segment only and NDNE distributors are not authorised to deal with the domestic cylinders as per the Agreement. The order of the Kerala High Court is not applicable to the case of the petitioner, and even otherwise, the representation so disposed of based on the order of the Kerala High Court, has not been challenged.

8. In the counter, it is further clarified that the amendment by way of issuing Circular by the IOCL cannot be relied on by the petitioner, as it is an internal LPG sales circular of the IOCL for amending their domestic LPG distributorship agreement, which entitles domestic LPG distributors to sell cylinders to domestic and commercial customers. But, the HPCL has not brought any such amendment in the domestic LPG distributorship agreement, more particularly, when the petitioner is only a NDNE distributor who on his own volition, applied for NDNE distributorship and hence, he is bound by the terms and conditions of the NDNE distributorship agreement executed between HPCL and him. There is no violation of Article 14 of the Constitution of India, as alleged by the petitioner, because, the petitioner, having signed the distributorship agreement for appointment of NDNE distributor only for commercial establishments like hotels, canteens, hospitals, etc. and also for any industrial consumers with industrial applications in the territory/distribution area mentioned as Kanyakumari or the adjoining Districts and hence,

his investment is business relates only to business proposition and knowing the investment burden, he applied for distributorship and he cannot be heard to say that he is having financial problem. Hence, for all the above reasons, the Writ Petition has no merit and the respondents pray that the Writ Petition may be dismissed.

9. When the Writ Petition is taken up for consideration, learned counsel for the petitioner submitted that the impugned order has been passed mainly on the ground that the HPCL is not a party to the said Writ Petition filed before the Kerala High Court against BPCL, but the finding of the Kerala High Court is a "judgment-in-rem" and hence, it is applicable to all the distributors. Hence, he submitted that the fourth respondent ought to have considered the representation of the petitioner by meeting out all the grounds raised by the petitioner. But the fourth respondent simply rejected the claim of the petitioner on the premise that the Kerala High Court order has no relevance to the representation made by the petitioner herein. Hence, learned counsel for the petitioner prayed that the impugned order may be quashed and a direction may be issued to the respondents to convert the existing non-domestic distributorship under the agreement, dated 29.06.2011 authorising the petitioner to serve all categories of LPG customers, industrial customers and commercial customers by selling LPG cylinders of all varieties. He also prayed that the matter may be remitted back to the fourth respondent for fresh consideration with proper analysis of the factual aspects of the matter in regard to the case of the petitioner.

10. Heard the learned Central Government Standing Counsel appearing for the first respondent and the learned Standing Counsel appearing for the respondents 2 to 4. Learned Standing Counsel appearing for the respondents 2 to 4, while reiterating the averments made in the counter affidavit, submitted that the petitioner has been appointed only as non-domestic LPG distributor and he has been so permitted to distribute the cylinders in and around the Kanyakumari District. He further submitted that the petitioner has been appointed based on the agreement, dated 29.06.2011 entered into between him and the fourth respondent. The said agreement is only for distributorship pertaining to commercial and industrial consumers and he has been exclusively appointed for marketing of NDNE packed LPG cylinders and he cannot run all the categories of LPG business, including domestic customers, industrial customers and commercial customers by selling LPG cylinders of all varieties. The petitioner on his own applied for becoming NDNE distributor and he cannot be heard to say that he is facing stiff competition from domestic and LPG distributors in the area. According to the learned Standing Counsel, the said Circular pertains only in respect of the IOCL,

making amendment in the agreement, whereas, the petitioner's distributorship relates to HPCL. Hence, the learned counsel for the respondents prayed for dismissal of the Writ Petition.

11. Upon perusing the pleadings and materials available on record and on carefully considering the submissions made on either side, it is seen that the petitioner submitted his representation, dated 12.12.2015, based on the order passed by the Kerala High Court in Writ Petition (C).No.2113 of 2015, dated 09.11.2015. By the said Circular, dated 03.10.2011, which is relied on by the petitioner, the IOCL has brought in an amendment to the agreement, by deleting a clause in the distributorship agreement, which restrains the LPG distributors from selling NDNE packed LPG to industrial customers. But, in the said Writ Petition, the Kerala High Court directed the BPCL to consider the representation to be submitted by the petitioner therein, based on which, the petitioner therein also submitted a representation, which was rejected the concerned authority, which according to the learned Standing Counsel for the respondents 2 to 4, has become final, as no challenge is made. The Kerala High Court, based on discretion vested with the Court, issued direction to consider the representation. But the same cannot be applied as a precedent to the case of the petitioner herein. In the instant case, the fourth respondent-HPCL has passed the impugned order stating that the said Kerala High Court order is of no relevance to them, since the HPCL is not a party to the said Writ Petition.

12. Moreover, in the impugned order, dated 22.12.2015, it is specifically stated that the petitioner applied for NDNE distributorship in pursuant to the HPCL's advertisement for appointment of NDNE distributorship and was selected, based on which, the agreement was executed on 29.06.2011 and while applying for such distributorship, the petitioner was aware of his nature of distributorship, and even so while executing the agreement and hence, it is observed in the impugned order that the petitioner as agreed upon, will be exclusively marketing only non-domestic packed LPG cylinders to commercial and industrial customers and not for any other purpose and it was further observed in the impugned order that as per the terms and conditions of the agreement, domestic consumers cannot be enrolled by any NDNE distributors, which is well aware to the petitioner.

13. As prayed for by the petitioner, this Court cannot mechanically issue direction to the respondents to consider the representation of the petitioner, by simply quashing the impugned order. Furthermore, the amendment so made in the said Circular, dated 03.10.2011, is not pertaining to HPCL and the amendment as enunciated in the Circular is made only by IOCL, which is not a party to this Writ Petition. Hence, the

petitioner cannot apprehend his case even before any such amendment is brought forth by HPCL. Hence, there is no merit in the case of the petitioner. I do not find any illegality, impropriety, irrationality or procedural irregularity in the impugned order passed by the fourth respondent. Hence, the Writ Petition is liable to be dismissed.

14. At this juncture, learned counsel for the petitioner prayed that atleast the first respondent-Union of India, Ministry of Petroleum and Natural Gas, may be directed to consider the case of the petitioner in the event of the petitioner submitting a fresh representation seeking necessary relief. Hence, the petitioner, if so advised, is at liberty to make necessary representation, ventilating his grievance and if such a representation is preferred, the first respondent-Union of India is directed to consider such representation, pass appropriate orders and dispose of such representation, on merits and in accordance with law, within a reasonable time.

15. With the above observations, the Writ Petition is disposed of. No costs. W.M.P. is closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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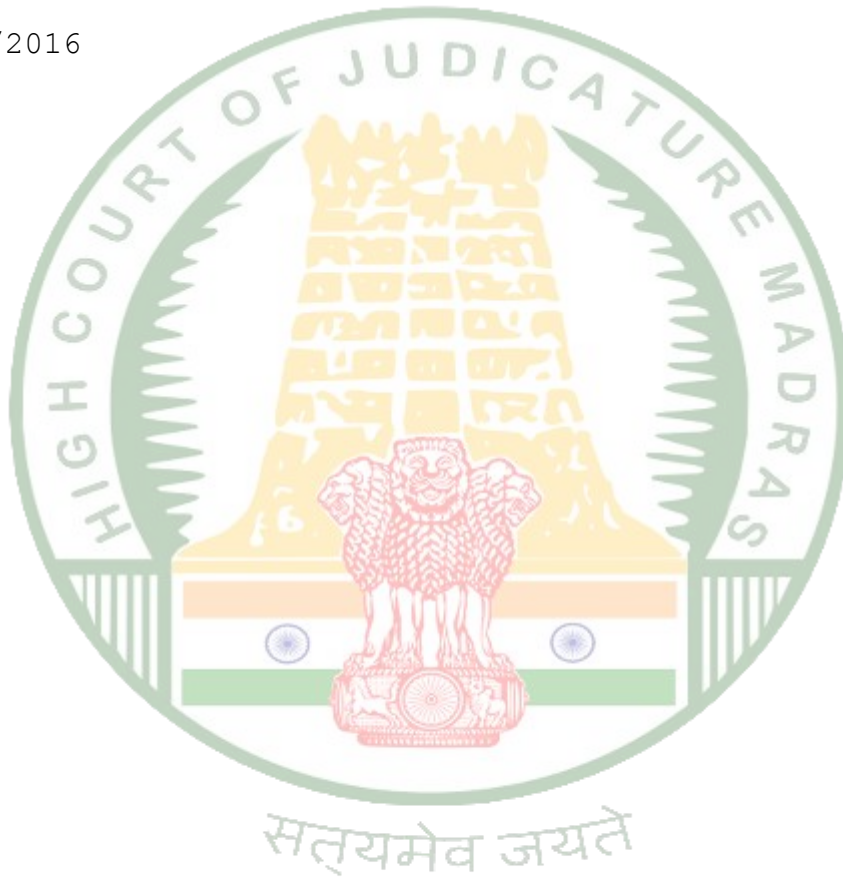
1. The Secretary to Government,
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+1cc to Mr.A.S.Mujibur Rahman, Advocate Sr.22611

W.P.No.773 of 2016

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