

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.09.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDER
&
THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.A.No.1094 of 2017
and
C.M.P.Nos.15316 & 15317 of 2017

M/s.Yuvaraja Gas Service
Rep. By its Partner
S.P.Rajendran
52/2, Sangu Nagar Main Road
Collectorate (Post)
Erode - 638 011.

... Appellants

Vs.

1.M/s.Bharat Petroleum Corporation Ltd
Rep. By its Chairman & Managing Director
Bharat Bhavan, No.4 & 6, Currimbhoy Road
Ballard Estate, Mumbai - 400 001.

2.The Regional Manager (LPG) South
M/s.Bharat Petroleum Corporation Ltd
No.1, Ranganathan Gardens
11th Main Road, Anna Nagar
Chennai - 600 040.

3.The Territory Manager (LPG)
Coimbatore LPG Plant
P.B.No.1644, Peelamedu
Coimbatore - 641 004.

... Respondents

Writ Appeal has been filed under clause 15 of Letters Patent, praying to set aside the order dated 0808.2017 passed in W.P.No.21083 of 2017 praying call for records of the 3rd respondent praying in CBE.LPG.3.6.CON dt.28.11.2014 is illegal and quash the same.

For Appellants : Mr.K.Rajendra Prasad

JUDGMENT

(Judgment of the Court was made by RAJIV SHAKDER, J)

1. This is an appeal filed against the judgment and order of the learned single Judge, dated 08.08.2017.

1.1. The learned single Judge, in effect, has dismissed the challenge made by the appellant before him, in respect of the order dated 28.11.2014 passed by the respondents i.e., Bharat Petroleum Corporation Limited (in short "BPCL") on the ground that, there has been a delay of nearly three years in challenging the said order.

2. The respondent No.1, vide an order dated 28.11.2014, had cancelled the dealership of the appellant. The record shows that the cancellation was ordered, based on an established charge levelled against the appellant that supplies of cylinders were shown to have been made to customers, who, in fact, were not in existence. According to respondent No.1, references of 44 ghost customers were gleaned from the record.

3. The record also shows that, in this behalf, respondent No.1 had carried out a joint exercise, which involved the appellant's Manager and a staff to ascertain the existence of those 44 customers qua whom the charge had been laid. The record shows that the appellant was unable to satisfy respondent No.1, with regard to the existence of the said 44 customers.

3.1. Consequently, respondent No.1 raised a debit note in the sum of Rs.6,93,537/- (Rupees six lakhs ninety three thousand five hundred and thirty seven only), with regard to penalty imposed qua such fraudulent supplies.

3.2. Despite, the appellant being asked to pay the demanded amount after moneys available to the respondent No.1 in the form of earnest money deposit, security deposit, permanent advance and cost of products retrieved were adjusted, there was no response from his side.

3.3. In sum, the respondent No.1 against the penalty amount of Rs.6,93,537/- (Rupees six lakhs ninety three thousand five hundred and thirty seven only) had made adjustment of a sum of Rs.4,97,430/- (Rupees four lakhs ninety seven thousand four hundred and thirty only), leaving an outstanding and unsatisfied demand, in its favour, equivalent to Rs.1,96,107/- (Rupees one lakh ninety six thousand one hundred and seven only).

3.4. This demand has not been liquidated by the appellant to date.

3.5. Furthermore, the record shows that on 19.09.2013, the appellant on his own had submitted a resignation letter, seeking a closure of the distributorship, awarded to him, for reason of old age. In addition thereto, the appellant also indicated in the very same letter that his family members would not be in a position to run the distributorship.

4. This apart, there is also a reference to a letter dated 11.06.2014 in the impugned letter dated 28.11.2014, which is suggestive of the fact that the appellant himself sought closure of the distributorship. Curiously, when asked, counsel for the appellant said that the said letter had not been placed on record. As indicated by the learned single Judge, the challenge, to the impugned letter dated 28.11.2014 by way of a writ petition, was made after a lapse of nearly three years.

5. Having regard to the record before us, we find no infirmity in the order of the learned single Judge. There is not only an unexplained delay and laches, but also, it is a case, where the appellant himself gave up his distributorship. Therefore, to revive the same, at this point in time, would be akin to unscrambling an egg.

6. Thus, for the forgoing reasons, we are not inclined to interfere with the impugned judgment and order passed by the learned single Judge.

7. The appeal is, accordingly, dismissed. Consequently, pending applications shall stand closed. There shall, however, be no order as to costs.

8. The Registry shall dispatch copies of this order to the respondents.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

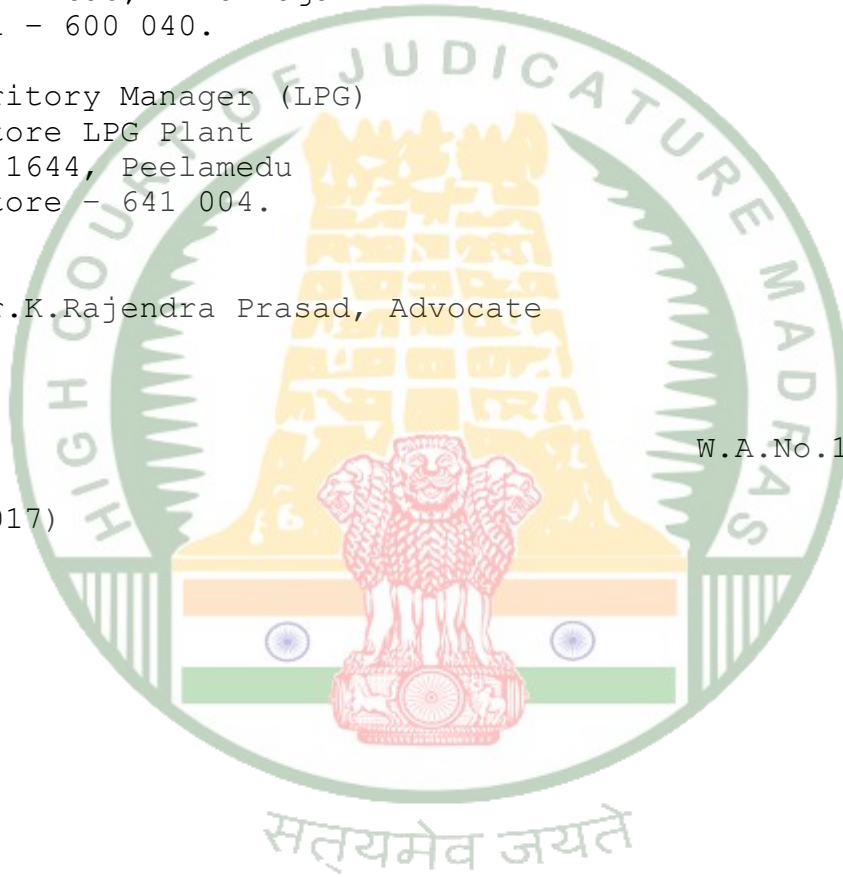
To

- 1.The Chairman & Managing Director
M/s.Bharat Petroleum Corporation Ltd
Bharat Bhavan, No.4 & 6, Currimbhoy Road
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Coimbatore - 641 004.

+1cc to Mr.K.Rajendra Prasad, Advocate
sr.64842

W.A.No.1094 of 2017

ss(21/9/2017)



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