

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2017

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

Writ Petition No. 8147 of 2015

and

M.P. No. 1 of 2015

S.N. Sridharan
Proprietor
M/s. Ajitha Gas Agency
No.21, Dr. Ambedkar Salai
North Thirumalai Nagar
Villivakkam, Chennai - 600 049
Also at :
No.733-A, Anna Salai
Thousand Lights
Chennai - 600 006

.. Petitioner

Versus

1. The Executive Director
Tamil Nadu State Office
Indian Oil Corporation Limited
Chennai - 600 034

2. The Chief Area Manager
Indian Oil Corporation Limited
Chennai - 600 018

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for issuing a Writ of Certiorari to call for the records in the impugned order of termination in TNL/S/218 dated 02.02.2015 issued by the first respondent, quash the same and direct the respondents to restore the same.

For Petitioner	:	Mrs. Sudharsana Sundar
For Respondents	:	Mr. M. Ravindran, Senior Advocate for Mr. Anandha Natarajan

ORDER

The petitioner calls in question the order of termination dated 02.02.2015 passed by the first respondent, in and by which, the LPG Distributorship awarded

to the petitioner was cancelled.

2. It is seen from the affidavit filed in support of the writ petition that the petitioner was awarded LPG Distributorship by the first respondent on 24.08.1989 under SC/ST quota and subsequently, the petitioner entered into a Memorandum of Agreement with the respondents for distribution of LPG cylinders. According to the petitioner, from the date of entering into such an agreement, the petitioner has been continuing the dealership without giving any room for any complaint. During the subsistence of Dealership, the petitioner entered into an agreement with one Chitra with a view to induct her as a Partnership by reconstituting the Proprietorship firm carried on by him. For this purpose, the petitioner approached the second respondent on 24.10.2012 to reconstitute the Proprietorship company into that of a Partnership firm by inducting one Mrs. A. Chitra as a Partner in the Partnership firm to be constituted. The said application was returned by the second respondent on 08.11.2002 stating that it could not be considered for the present.

3. It is the specific grievance of the petitioner that at the time of obtaining the dealership, the petitioner has taken on lease a land owned by one Balasubramanian Sha by entering into an agreement with him during the year 1989. The lease agreement was for a period of fifteen years. However, the said Balasubramaniam Sha died in the year 1993 and the petitioner paid the lease rent to the legal heirs of the deceased. While so, during the year 2009, when the lease agreement was due for renewal, the legal heirs have sold the land which was hitherto used by the petitioner as a godown for storage of LPG cylinders, to Mrs.

Chitra. As the said Chitra became the owner of the land leased to the petitioner, the petitioner requested her to renew the lease. However, the said Chitra insisted the petitioner to induct her as a Partner in the dealership business carried on him. According to the petitioner, as mentioned above, even on 08.11.2002 the second respondent returned the application submitted by the petitioner to convert the Proprietorship firm into a partnership firm. However, once again, on 23.06.2010, the petitioner sent similar application seeking to permit him to induct Mrs. Chitra as one of the Partners in the Distributorship business. On the basis of such an application, an enquiry was conducted by the second respondent in which the petitioner and the said Chitra have participated.

4. According to the petitioner, he was directed to submit a fresh proposal for consideration of the second respondent to reconstitute the Proprietorship firm. Accordingly, on 21.09.2012, the petitioner submitted a fresh proposal for reconstitution of the dealership firm. On the basis of the same, the second respondent, by a communication dated 26.12.2012, directed the petitioner to amend the draft partnership deed by incorporating certain changes. While so, the said Chitra, for the reasons best known, issued a legal notice dated 11.02.2013 to the second respondent in which she had made certain objections for being inducted as a Partner. On the basis of the notice dated 11.02.2013, the second respondent sent a communication dated 20.02.2013 stating that the claim of the petitioner for reconstituting the Proprietorship firm into one of Partnership firm cannot be considered. However, after much persuasion, the petitioner convinced the said Chitra and entered into a new agreement for use of the godown with

renewal. The second respondent also, having satisfied with such an option, given approval for reorganisation of the distributorship awarded to the petitioner and directed him to register the partnership. Accordingly, on 13.02.2013, a partnership deed was registered and the petitioner also opened a bank account in the name of the partners by closing the existing account. At this stage, the second respondent has issued an order dated 15.01.2014, suspending the distributorship awarded to the petitioner. Challenging the same, the petitioner has filed WP No. 2570 of 2014 and it was dismissed by this Court on 04.02.2015. In the meantime, the second respondent issued a show cause notice for termination of dealership on 17.03.2014. Challenging the same, the petitioner has filed WP No. 15060 of 2014 before this Court and by order dated 11.06.2014, this Court, by recording the statement of the counsel for the respondents that the respondents are ready to furnish certain documents sought for by the petitioner, disposed of the said WP No. 15060 of 2014 by issuing certain directions.

5. According to the learned counsel for the petitioner, the directions issued in WP No. 15060 of 2014 on 11.06.2014 have not been complied with by the respondents and therefore the petitioner was constrained to file Contempt Petition No. 941 of 2015 before this Court.

6. In the light of the above factual background, this Court heard the submission of the learned counsel for the petitioner as well as the learned Senior counsel for the respondents at length.

7. After advancing elaborate argument, the learned counsel appearing for both sides would submit that the dealership agreement entered into between the petitioner and the respondents contains a clause for arbitration. To be specific, Clause 37 of the agreement dated 24.08.1989 entered into between the petitioner and the Corporation provides for resolution of any dispute by an arbitrator. Therefore, the learned counsel for both sides would submit that to put a quietus to the dispute between the petitioner and the corporation, they mutually agree to appoint a retired Judge of this Court as an Arbitrator who shall resolve the dispute by arbitrating the dispute between the parties.

8. Having regard to the above facts and circumstances of the case, the submission of the counsel for both sides and the fact that the agreement dated 24.08.1989 provides for resolution of the dispute by an Arbitrator and by consent of the parties, this Court, hereby appoints Honourable Mr. Justice G.K. Akbar Ali, former Judge of this Court, at No.6, 9th Cross Street, Senthil Nagar, Kolathur, Chennai - 600 099 as an Arbitrator to resolve the dispute between the petitioner and the Corporation. The learned Arbitrator shall commence and conclude the arbitration proceedings in Tamil Nadu Arbitration Centre, High Court, Madras. The fee payable to the learned Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (Arbitration Proceedings) Rules, 2014.

In the light of the above, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

30.01.2017

Index : Yes/No

kkd/rsh

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B. RAJENDRAN, J

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