IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2017

CORAM:
THE HON'BLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.3344 of 2013

A.Sudhakar ... Petitioner

vs.

1. Appellate Authority,
Executive Director (Retail Sales),
Indian Oil Corporation Ltd.,
Indian Oil Bhawan,
G-9, Ali Yavar Jung Marg,
Bandra (East),
Mumbai - 400 051.

2. M/s.Indian Oil Corporation Ltd.,
rep. by Executive Director,
Indian Oil Bhavan,
No.139, Mahatma Gandhi Road,
(Nungambakkam High Road),
Chennai 600 034.

3. The Chief Divisional Retail Sales Manager,
Indian Oil Corporation,
Marketing Division,
B-35, Shastri Road,
Trichy. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records relating to the order dated 15.01.2013 passed by the 1st respondent, confirming the order of termination of dealership of the petitioner passed by the 2nd respondent, dated 21.09.2012, quash the same and consequently direct the 2nd respondent to restore the dealership of the petitioner granted on 30.06.2006.

For Petitioner : Mr.M.L.Joseph,
for M/s.Chennai Law Associates

For Respondents : Mr.R.Ravi

O R D E R

The petitioner has come up with this Writ Petition seeking to quash the impugned order dated 15.01.2013 passed by the 1st respondent, confirming the order of termination of dealership passed by the 2nd respondent on 21.09.2012 and for a consequential direction to the 2nd respondent to restore the dealership granted to him on 30.06.2006.

2. According to the petitioner, he is the sole proprietor of the firm 'M/s.Kamatchi Amman Agencies' and he was appointed as a dealer for sale of Petrol and High Speed Diesel in the retail outlet at Karuvazhakarai, Nagapattinam District. A dealership agreement was entered into between the 2nd respondent and the petitioner on 31.05.2006 valid for a period of 15 years, and that the tenure of dealership could be renewed for a successive period of one year each until determined by either party, by giving three months' notice in writing, of their intention to terminate the Agreement.

3. It is further stated by the petitioner that he hails from a rural background with low rate of literacy and that he invested all his funds in developing the retail sales of Motor Spirit (MS) & High Speed Diesel (HSD), as the said retail outlet happened to be the only outlet along a vast stretch of road connecting Mayiladuthurai and Poompuhar. According to the petitioner, he had set up all modern infrastructural facilities in his outlet for the benefit of the motoring public and had also been awarded the best dealer award in 2008 by the 2nd respondent. Though, there had been a steady increase in the sale of petrol and diesel from 2006, in the year 2010, the road where the petitioner's outlet is located was excavated for the purpose of road widening and the work was carried over for a period of more than two years. Because of deep trenches on either side of the road, vehicles plying on the said road could not have easy access to the outlet and it was impossible for the petitioner to meet his required sales target.

4. While so, on 09.09.2011, the officials of the 2nd respondent conducted a surprise inspection in the petitioner's outlet and issued a show cause notice dated 08.11.2011 to the petitioner with charges of stock variation beyond permissible limits and that the sales at the retail outlet had not been in line with the agreed targets as recorded in the dealership agreement. Though the petitioner sent a reply to the 2nd respondent on 28.11.2011, the same was not considered and no opportunity of personal hearing was given to him to rebut the allegations. Instead, the 2nd respondent terminated the petitioner's dealership on 21.09.2012, though it was initially

valid till 2021.

5. However, in the termination order, the petitioner was afforded an option of preferring an appeal before the 1st respondent for violation of clause 6.1.10 under chapter 6 of the Marketing Discipline Guidelines (in short 'MDG') within 30 days, in case the petitioner is aggrieved by the termination order. Thereafter, the petitioner preferred an appeal before the 1st respondent on 04.10.2012. Since the 1st respondent did not evince interest in hearing the appeal, the petitioner filed W.P.No.29340 of 2012 before this Court for a direction to the 1st respondent to dispose of the appeal within a stipulated period and by an order dated 02.11.2012, this Court directed the 1st respondent therein to dispose of the appeal within a period of four weeks from the date of receipt of a copy of the order.

6. Pursuant thereto, the 1st respondent, who is a quasi-judicial authority, fixed the hearing of the appeal on 20.12.2012 at Mumbai at 2.00 p.m. and heard the Counsel authorized by the petitioner in a hurried manner and orally indicated that he would not reverse the order of termination. By the impugned order dated 15.01.2013, the 1st respondent confirmed the order of termination dated 21.09.2012 passed by the 2nd respondent. Aggrieved by the same, the petitioner is before the Court, contending that the 1st respondent had not taken into consideration any of the grounds urged in the appeal and that no efforts were made to call for the records or question the officials of the 2nd respondent on the issue, so as to arrive at the correct reason for stock variation in MS & HSD, thereby causing excess delivery from dispensing units. It is the grievance of the petitioner that the respondent/IOC has retained a huge amount of Rs.6,18,000/- deposited by him in the 2nd respondent's account on 15.09.2011 as advance for supply of MS & HSD to the retail outlet.

7. Respondents/IOC have filed counter affidavit, wherein, it is stated that the action of termination of dealership was taken in line with MDG- 2005, as per which, if stock variation is beyond permissible limits and if the explanation of the dealer is not satisfactory, penal action is termination. According to them, it is incorrect that the 1st respondent did not evince interest in hearing the appeal and as per MDG-2005, time limit of 90 days is followed from the date of appeal and that the petitioner, without waiting for the time limit prescribed in the MDG, filed W.P.No.29340 of 2012 before this Court.

8. Moreover, in the impugned order dated 15.01.2013, the 1st respondent has clearly stated that the alleged irregularity of non-achievement of sales target is beyond the purview of the appeal and it is on the basis of dealership agreement and not

under MDG-2005 and hence, he has not addressed the grounds raised by the petitioner in the appeal in connection with non-achievement of sales target.

9. Learned counsel for the petitioner submitted that even though allegations have been made with regard to three irregularities mentioned in the Notice dated 20.10.2011, a detailed explanation has been given by the petitioner, stating that there was leakage or excess supply of fuel and that in the subsequent show cause notice dated 08.11.2011, the variations with regard to stock beyond permissible limit were also included and the same was also answered by the petitioner by means of a reply, no matter, the target sales was also one of the charges.

10. It is his further submission that no irregularity was committed by the petitioner at any point of time and the loss is either due to leakage in pump caused by excess fuel supply to the customers and that on the date of inspection, there was no stock available as the sump was dry, thereby the respondent/IOC could not take any samples for verification to ascertain if there was adulteration. Learned counsel also submitted that the respondent/IOC was not satisfied with the explanation of the two Memos, more particularly, with regard to the non-availability of samples, and shortage of fuel, based on the Agreement, dated 18.12.2006, and Marketing Discipline Guidelines dated 02.12.2005, due to which the petitioner's Agreement was terminated by the impugned order dated 21.09.2012. Aggrieved by that, the petitioner preferred an appeal on 04.10.2012 and that appeal was also rejected.

11. Heard the learned counsel on either side and perused the material documents available on record.

12. The 2nd respondent/Original Authority proceeded on the basis that the petitioner has not reached the required sales target and that there was no stock for which, the respondent/IOC has reserved the right to issue the show cause notice. It has been stated that the petitioner has not given any reason for stock variation, except stating that he had incurred loss due to excess delivery of fuel to the customers.

13. It has also been stated in the impugned order that the petitioner has not given any reasons for dry out and hence, the dealership has got to be terminated based on the Dealership Agreement and Marketing Discipline Guidelines. In the appeal, the petitioner has narrated in detail, that there was not only leakage, but also excess supply of fuel to the customers and that he was under the threat of SARFAESI proceedings. He further stated that there was no complaint against him and due to leakage and spillage, there was variation in stock, due to

which he incurred loss.

14. He further stated that the oil supply machine in the petitioner's outlet did not have the facility to display the prices, because of which, the sales persons, being illiterate, found it difficult to calculate the cost of diesel and petrol every time, while supplying the same to the customers. The 1st respondent/Appellate Authority rejected the appeal, confirming the order of the 2nd respondent/Original Authority on the ground that the appeal is confined only with regard to stock variation and not with regard to non-achievement of the sales target. Even though there was a mention that the sales target has not been achieved, the Department has reserved the right to issue fresh notice, however, as on date, no notice has been issued.

15. According to the 1st respondent/Appellate Authority, he has got the power to deal with stock variation alone and not the sales target. Therefore, the issue on hand pertains to stock variation alone. The Appellate Authority had rejected the appeal on the ground that there was no complaint from the petitioner regarding the excess supply/leakage during the lean period. It proceeds on the basis that there was no document to that effect at all. The petitioner has taken a plea that there was leakage from the hand pump, due to which he suffered loss and was not able to notice the drying of the sump in which the fuel is kept.

16. The reasoning given by the 2nd respondent/Original Authority and the 1st respondent/Appellate Authority that the petitioner has not made any complaint with regard to leakage, may not be correct. The petitioner has made specific averments in his pleadings, which has not been dealt with by the authorities and it has been brushed aside by a stroke of a pen.

17. It is true that the sump was dry. It may have been due to excess supply of fuel to the customers, without the knowledge of the petitioner due to leakage in the hand pump. On a perusal of the entire documents produced before this Court, it is seen that there is no malafide intention on the part of the petitioner to deceive the respondent/IOC. Ultimately, the petitioner has suffered loss on account of leakage in hand pump, due to excess supply of fuel to the customers.

18. In this case, though it has not been established by the petitioner, through any evidence that shortage of stock is on account of two reasons viz. leakage in hand pump and excess supply of fuel, he has been put through hardships and his license has been terminated. In fact, neither the 2nd respondent/Original Authority nor the 1st respondent/Appellate

Authority has considered the detailed explanation of the petitioner, while rejecting his request for continuation of dealership. When this Court pointed out to the learned counsel appearing for the respondent/IOC as to why this kind of capital punishment viz. termination of dealership is given to the petitioner, he submitted that the Marketing Discipline Guidelines has been amended and that for the charges framed against the petitioner, the capital punishment is only 15 days suspension and it has no retrospective effect.

19. Taking note of the aforesaid submissions of the learned counsel appearing for the respondent/IOC that the authorities ought to have noticed that the petitioner has not committed irregularities, i.e. adulteration, etc. and that he suffered loss, this Court is of the view that stock-variation is per se not illegal, unless there is adulteration. Hence, this Court interferes with the orders impugned in this Writ Petition and accordingly, they are set aside.

20. Further, having terminated the dealership, the authorities should have passed orders within 45 days, but, unfortunately, they have taken 11 months. Also, a sum of Rs.6,18,000/- is said to have been deposited by the petitioner in the account of the respondent/IOC towards advance payment for supply of fuel, which is lying with them without fetching any interest. Therefore, the dealership shall be restored to the petitioner, if otherwise, he fulfills the conditions stipulated in the Marketing Discipline Guidelines.

The Writ Petition is allowed with the above direction and observation. No costs. Consequently, connected M.P.Nos.1 and 2 of 2013 is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To:

1. The Appellate Authority,
   Executive Director (Retail Sales),
   Indian Oil Corporation Ltd.,
   Indian Oil Bhawan,
   G-9, Ali Yavar Jung Marg,
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2. Executive Director,
   Indian Oil Corporation Ltd.,
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   Chennai 600 034.

3. The Chief Divisional Retails Sales Manager,
   Indian Oil Corporation,
   Marketing Division,
   B-35, Shastri Road,
   Trichy.

+1cc to M/s. Chennai Law Associates, Advocate, S.R.No.85292

W.P.No.3344 of 2013

VSN(CO)

RRK(19/12/2017)