



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A.(MD)No.882 of 2017

and

C.M.P.(MD)No.5886 of 2017

Indian Oil Corporation Ltd,
"Indian Oil Bhavan"
139, Mahatma Gandhi Road,
Chennai-34 Represented by its
Executive Director.

... Appellant

Vs.

Arumugam,
Proprietor,
M/s.Ratna Agencies.

...Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P(MD)No.5300 of 2009 dated 21.02.2014.

Prayer in WP(MD)No.5300/2009:-

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the respondent in TNLA/TER/Kurumbur-SKO dated 22/05/2009 and to quash the same and directing the respondent to continue the dealership of the petitioner with all benefits.

For Appellant
For Respondent

: Mr.K.Muraleedharan
: Mr.V.Kannan

JUDGMENT

[Judgment of the Court was delivered by M.M.SUNDRESH, J.]

This Writ Appeal has been filed against the order passed by this Court in W.P(MD)No.5300 of 2009, dated 21.02.2014.

2. Heard Mr.K.Muraleedharan, learned counsel appearing for the appellant and Mr.V.Kannan, learned counsel appearing for the respondent.



3. The appellant is the respondent in the writ petition. A dealership was given in favour of the respondent / writ petitioner by the appellant in the year 1987. A complaint was made that the appellant was gainfully employed as a driver contrary to Clause 16(c)(ii) of the Dealership Agreement. In pursuant to the show-cause notice issued, an order of termination was passed on 22.05.2009. The respondent filed a Writ Petition in W.P(MD)No.5300 of 2009. The learned Single Judge in and by which the order dated 21.02.2014, was pleased to held as follows:

"8. I hold that there is force in the contention of the learned counsel for the petitioner. It is admitted fact that in the year 1965 itself the petitioner was working as a driver and he retired from service with effect from 29.03.1992 and that he was managing retail dealership business as sole proprietor. The respondent has not stated that the complaint given by one T.M.Pandian has been proved to be correct. Having permitted the petitioner to continue the business from 30.04.1987 as sole proprietor, it is not open to the respondent to terminate the dealership granted to the petitioner on the ground that he worked as a driver from 19.04.1958 to 29.03.1992. Therefore, the impugned order, dated 22.05.2009 is set aside and the respondent is directed to continue the retail dealership granted to the petitioner as per the agreement dated 30.04.1987. It is open to the respondent to invoke Clause 28(a) of the Dealership Agreement and refer the dispute for arbitration. The writ petition is allowed as prayed for. No costs. Consequently, connected miscellaneous petition is closed."

4. On hearing the counsel, it appears that the dealership is not vogue today. Thus, the respondent is not factually acting as a dealer as there is neither a supply nor a dealership in-existence. We find the learned Single Judge, in her considered view having referred the dispute to the Arbitrator under Clause 28(a) of the Dealership Agreement ought not to have given a finding on merits and thereafter proceeded to set aside the order of termination. In effect, there will be nothing else for the Arbitrator to decide, once the order of termination is set aside on merit.

5. In such view of the matter, we hereby set aside the order of the learned Single Judge with respect to the portion by which the order of termination was set aside on merit. This writ appeal is allowed in part. The respondent is directed to initiate arbitration proceedings by invoking Clause 28(a) of the Dealership Agreement within a period of four weeks



from the date of receipt of a copy of this order. After the appointment of the learned Arbitrator, the proceedings shall be concluded within a period of three months thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (Cr1.Side)

/True Copy/

Sub-Assistant Registrar

TO

The Executive Director.
Indian Oil Corporation Ltd,
"Indian Oil Bhavan"
139, Mahatma Gandhi Road,
Chennai-34

+One cc to Mr.K.Muraleedharan, Advocate, SR.No.63659

+One cc to Mr.V.Kannan, Advocate, SR.No.63290

akv/sm

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