

**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

**WRIT PETITION No.27234 of 2012**

**ORDER:**

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking to declare initiation of *de novo* enquiry and issuance of show cause notice No.VRO/NCK/RET, dated 23.07.2012 for termination of dealership Agreement dt.01.04.2003 as illegal and arbitrary.

The averments made in the affidavit filed in support of the writ petition would show that the petitioner, which is a partnership firm, was appointed as a dealer for retail sale or supply of petrol/diesel of the 1<sup>st</sup> respondent-Corporation at Thotada Village, Srikakulam District, about 60 years ago. The agreement between the parties was being renewed from time to time and the last renewal was on 01.04.2003. While things stood thus, the 2<sup>nd</sup> respondent issued a notice dated 02.05.2007 stating that when the Executive Officer inspected the premises of the petitioner, he noticed some irregularities. Along with the show cause notice, the inspection report was also furnished to the petitioner informing the irregularities found in the premises. The petitioner was asked to send his reply within seven days from the date of receipt of said notice. Another notice dated 16.05.2007 was also issued to the petitioner reiterating the allegations made in the earlier show cause notice. A detailed explanation came to be submitted by the petitioner on 03.08.2007, denying the allegations made in the notices. The averments in the affidavit would further show that another show cause notice dated 26.09.2007 was issued to the petitioner reiterating the same allegations leveled in the earlier

notices and further mentioning the clauses referred to above in the dispensing and licensing agreements. Another explanation was submitted by the petitioner on 05.11.2007. However, without considering the explanations submitted by the petitioner in a proper perspective, the 2<sup>nd</sup> respondent passed an order dated 07.03.2008 terminating the dealership agreement dated 01.04.2003. Questioning the said termination, the petitioner filed W.P.No.7235 of 2008. After hearing both sides, this Court vide order dated 07.03.2008 allowed the said Writ Petition setting aside the termination. Challenging the same, the respondent-Corporation filed Writ Appeal No.375 of 2009, which was dismissed by this Court vide order dated 08.09.2009. Pursuant to said orders, an enquiry officer was appointed and a show cause notice dated 16.11.2009 was issued. Aggrieved by the same, the petitioner filed W.P.No.29113 of 2009 and C.C.No.1822 of 2009. It is further averred that the respondents initiated *de novo* enquiry, directed appearance on 06.01.2010, recorded the evidence of the Inspecting Officer and concluded the enquiry on 13.01.2010 holding that out of three charges leveled against the petitioner, two charges were found to be proved. After receipt of such report, impugned show cause notice came to be issued. Challenging the same, present Writ Petition is filed.

Heard both sides and perused the material on record.

Learned counsel for the petitioner mainly submits that conducting the enquiry itself is illegal and arbitrary. According to him, before initiation of proceedings, the petitioner ought to have been given an opportunity to explain the allegations made therein.

Though the learned counsel for the petitioner submits that no proper opportunity was given to the petitioner, a reading of the show cause notice indicates that after hearing both the parties, the report dated 13.01.2010 came to be submitted. The contention of the petitioner that no opportunity was given to put forth his defence before the enquiry officer, is answered in the impugned show cause notice itself stating that in fact petitioner appeared before the Enquiry Officer along with Advocate and conducted cross-examination of the inspecting officer. As can be seen from the report dated 13.01.2010, out of three charges, two charges were held to be proved. In order to answer the said findings, present show cause notice came to be issued.

Learned counsel for the respondents submits that writ petition itself is not maintainable since the Court cannot entertain a writ petition against issuance of a show cause notice. In support of the said contention, he relied upon a decision of this Court in ***K.M.Safiullah v. A.P. State Wakf Board and others***<sup>1</sup>. He further submits that as the agreement refers to arbitration clause, the petitioner ought not to have invoked the writ jurisdiction.

The said contention is strongly disputed by the learned counsel for the petitioner basing on the decision of this Court in ***K.Harinath v. Hindustan Petroleum Corporation Ltd., Mumbai and another***<sup>2</sup> wherein a Division Bench of this Court set aside the order of the learned Single Judge who dismissed the writ petition on the ground of availability of alternative remedy of arbitration. In said decision, the Division Bench held that as the arbitrator

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<sup>1</sup> 2003 (2) ALD 440

<sup>2</sup> 2013 (4) ALD 518 (DB)

cannot grant relief of restoration of dealership, the learned Single Judge erred in dismissing the Writ Petition on the ground of availability of alternative remedy of arbitration.

It is to be noted that in **K.Harinath's case** (referred supra), the relief sought for is restoration of dealership. In the instant case, impugned show cause notice was issued to the petitioner asking him to explain with regard to the irregularities pointed out by the inspecting officer, within a period of seven days from the date of receipt of such show cause notice, failing which the dealership shall be terminated. Thus, the facts and reliefs involved in the said case and the present case are totally different.

It is to be noted that the writ petition as well as the writ appeal went in favour of the petitioner on the ground that no opportunity was given to the petitioner. By an order dated 31.08.2012, this Court granted interim order in favour of the petitioner. Pursuant to the said interim order, as submitted by the learned counsel for the petitioner, supply has been restored to the petitioner, which fact is disputed by the respondent-Corporation stating that the petitioner is not running the outlet.

In view of the ratio laid down in **K.M.Safiullah's case** (referred supra), question of entertaining a writ petition against issuance of show cause notice, would not arise.

Having regard to the facts in issue, this Writ Petition is disposed of directing the petitioner to submit his explanation to the show cause notice dated 23.07.2012, within a period of fifteen days from the date of receipt of a copy of this order, thereafter the respondent-Corporation shall pass appropriate orders at the

earliest. Till such time, the interim order dated 31.08.2012 passed by this Court shall remain in force.

Miscellaneous petitions pending in this writ petition, if any, shall stand closed. No costs.

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**JUSTICE C. PRAVEEN KUMAR**

21.03.2017  
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