

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

Writ Appeal No.1575 of 2017

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.28225 of 2017 dated 06.09.2017. The writ petition was allowed at the stage of admission, without a counter-affidavit being filed by the appellant herein (respondent in the writ petition). While it does appear that two weeks time was granted to file a counter-affidavit, which the appellant failed to utilise, the writ petition itself came to be disposed of by order dated 06.09.2017.

The allegation, among several others levelled against the respondent-writ petitioners, is that a major deviation was observed regarding automatic change of "K-Factor" (Calibration) of Dresser Wayne MPD & "Additional/unauthorised fittings/gears found in dispensing units/tampering with dispensing unit".

The order of the Learned Single Judge is to the effect that, in the absence of the licence, granted in favour of the respondent-writ petitioner, being suspended or terminated, they should be allowed to continue to run the petroleum retail outlet. The Writ Petition was filed on 21.08.2017, and was disposed of on 06.09.2017. It is evident that the Learned Single Judge had merely granted the appellant two weeks' time to file their counter-affidavit, and since they did not do so, the Writ Petition itself was disposed of.

Sri O.Manohar Reddy, learned counsel for the appellant, would draw our attention to the dispensing pump & selling licence agreement dated 29.08.2015 which, in Clause 13(d), stipulates that if the licensee commits breach of any covenant and/or stipulation in the licence, the

company shall not be bound to observe and perform its obligations thereunder. Learned counsel would submit that, since the dispensing unit of the respondent-writ petitioners was found to have been tampered with, resulting in short supply to the customers, the respondent-writ petitioners had committed breach of the covenants of the licence, and the appellant was therefore not bound to discharge its obligations under the licence agreement, including supply of petroleum products to the respondent-writ petitioners.

While this contention urged before us, on behalf of the appellant, is based on the terms and conditions of the licence, it is evident from the order of the Learned Single Judge that none of these contentions were examined before the order under appeal came to be passed. It does appear, *prima facie*, that Clause 13(d) of the agreement confers power on the appellant to avoid discharging their obligation under the licence, in cases where the licensee fails to abide by its obligations under the agreement.

Sri P.Kamalakar, learned counsel for the respondent-writ petitioners, would submit that, since these contentions were not examined by the Learned Single Judge, this Court may, instead of adjudicating the rival contentions on merits, remand the matter to the Learned Single Judge.

We consider it appropriate, in such circumstances, to set aside the order under appeal and restore the writ petition to file. The appellant shall file their counter-affidavit within ten days from today. The Learned Single Judge shall decide the matter afresh on its merits without being influenced by any observations made either in the order under appeal or in the order now passed by us. It is open to the respondent-writ petitioners to request the Learned Single Judge to take up the Writ Petition for admission any day after ten days from today.

The Writ Appeal is disposed of accordingly. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(ABHINAND KUMAR SHAVILI, J)

14th November, 2017
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Date: 14.11.2017