IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Writ Petition No. 1957 of 2013
With
Civil Application No.4892 of 2014
And
Civil Application No.13085 of 2016

Hanuman Radhakisan Joshi. .. **Petitioner.**

Versus

The Union of India & Others. .. **Respondents.**

Shri. R.N. Dhorde, Senior Advocate, instructed by Shri. V.R. Dhorde, Advocate, for petitioner.

Mrs. D.S. Jape, Counsel for Union of India.

Shri. A.P. Bhandari, Advocate, for respondent Nos.2 to 4.

Coram: T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.

Date: 27 February 2018

ORDER (Per T.V. Nalawade, J.):

1) The petition is filed under Articles 14,19(1)(g) and 226 of the Constitution of India for issuing writ of mandamus against the respondent-Indian Oil Corporation Limited to pay an amount of Rs.23,28,162/- Both the sides are heard.

2) It is the case of the petitioner that in the year 2002 the policy of the respondent-Company changed and it started allowing land owners to manage and maintain the company owned and the company operated Retail Outlets. Initially the petitioner was appointed for maintenance and handing of one such Outlet at Shevgaon by Indo Burma Petroleum Company. This company was taken over by Indian Oil Corporation, present respondent. In the year 2006 when new company tried to implement other policy, the petitioner had come to this Court for protecting the rights given to him by filing Writ Petition No.6664/2007. Some interim relief was given by this Court in the said proceeding and the petitioner continued to maintain and manage the aforesaid Outlet.

3) It is the case of the petitioner that under the contract he was to be given commission and the commission was fixed by the respondent-company for different periods and it was issuing circulars in that regard. It is the contention of the petitioner that he was paid such commission for some period but from January 2013 the company stopped making the payment of such

commission, the difference in the amount of commission which was increased by subsequent circulars. It is the contention of the petitioner that he was required to pay service tax which was Rs.4,69,278. It is contended that he is entitled to get the difference in the commission which is of Rs.11,96,329/- and including the service tax the total amount comes to Rs.23,28,162/-. It is contended that as the respondent-company is avoiding to make payment direction needs to be given for that to the respondent-company.

4) With the petition some guidelines showing the policy of the Oil company were produced. The petitioner had applied for getting dealership also but admittedly he did not get the dealership. There is correspondence showing that the petitioner had then applied for giving him contract for maintenance and handling of the aforesaid Outlet and his application was considered and allowed by the oil company. He executed indemnity bond/undertaking for getting that contract on 10-7-2003. From time to time he had applied for continuation of the said contract and it was continued. In all the

correspondence it was mentioned by the company that this contract was subject to the terms and conditions laid down by the company. The correspondence shows that there was fixed remuneration which was to be paid to the petitioner and the company was revising the renumeration package on the basis of quantity sold.

5) The record produced by the petitioner shows that in the year 2012 he had made correspondence with the company as the concerned Department was asking him to pay sales tax.

6) First time, in the year 2013 the petitioner asked for the difference of commission. He is relying on some entries made in the bank account to show that some amounts were paid to him by the company but there is no record with the petitioner to show that they were towards the commission. In view of these circumstances, when this matter first came before this Court, this Court asked the learned counsel for the petitioner to produce the contract which must have been signed by the petitioner and the company. Only after insistence of this Court for production

of copy, today copy of the contract for maintenance and handling came to be produced.

7) The contract was executed in the year 2004. In clause (7) it is mentioned that the contractor shall have no right, title or interest whether as owner, lessee, tenant or otherwise in the premises nor in the Outlet and the premises was to be presumed in exclusive possession of the company. The company was entitled to make direct or indirect sale to any person at the same place and the contractor was not to make any claim or allowance for such direct or indirect sales made by the company. The contractor or his persons were not given right to claim employment with the company. The company was to reimburse administrative cost of telephone, electricity, water charges etc. incurred for operation of the Retail Outlet for dispensing products to the contractor after submission of vouchers. Petitioner was entitled to get reimbursement. The right was given to the company to decide reasonability of such expenses. In consideration of services to be rendered by the petitioner, he was to be paid lump sum contractual charges of Rs.22,588/- per

month for initial period of three months starting from May 2004 and thereafter the monthly lump sum contractual charges were to be fixed on the basis of average monthly sale proceeds for three months.

8) Some of the relevant clauses of the contract are quoted above and they show that the company was to bear the administrative expenses including the charges of electricity, water etc. and the petitioner was entitled to get fixed amount as lump sum contractual charges per month and this amount was to be increased or decreased on the basis of quantity of actual sale made by the petitioner. This document does not show that there was agreement to pay commission on the basis of net fixed assets as per Dealer's Commission structure. The contract shows that the first contract was to remain in existence for a period of one year and then from time to time similar contracts were to be signed. Thus, the investment was of the company and the petitioner, contractor was to get only contractual fixed charges. In view of these circumstances the petitioner cannot claim any commission under the name like "Dealer's Commission" which is calculated on

the basis of sale per kilo liter and on the basis of return on net fixed assets as per Dealer's Commission structure. It is already observed that the petitioner has avoided to place on record the last contract or all the given contracts on the basis of which he is claiming the commission which can be named as revised Dealer's Commission which can be added in the retail selling prices of MS/HSD (All Grades). That is altogether a different scheme and there is no whisper about that scheme in the record produced by the petitioner. Thus there is dispute over the nature of contract made by the respondent-company with the petitioner about the entitlement of the petitioner to get the aforesaid Dealer's Commission.

9) This Court had asked learned counsel for the petitioner to satisfy this Court as to how writ of mandamus can be issued against the respondent Corporation in view of the aforesaid circumstances. The learned counsel placed reliance on the observations made by the Apex Court in the cases reported as (1) **(2004) 3 SCC 553 (ABL International Ltd. v. Expert Credit Guarantee Corp. of India Ltd.)**; and, (2) **2008 DGLS(SC)**

53 (Food Corporation of India v. Seil Ltd.). This Court has carefully gone through the facts of those reported cases. There was no order of the State in favour of the petitioner with regard to the claim made by the petitioner in the present matter. There was the contractual obligation of the aforesaid nature and there was no contract of other nature as contended by the petitioner. In any case, it was purely the work given on contract basis of maintenance and handling the outlet to the petitioner and he was to be paid fixed amount for the same. There is dispute about the amount claimed also. Due to these circumstances this Court holds that it is not possible to use writ jurisdiction in favour of the petitioner. On merits also the petitioner has not made out any case. In the result, the petition stands dismissed. Both the civil application stand disposed of.

Sd/-	Sd/-
(SUNIL K. KOTWAL, J.)	**(T.V. NALAWADE, J.)**

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