IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1229 of 2014
and MP No.1 of 2014

S.K.Kanniah Naidu & Co.
A Partnership Firm
Rep. By its Partner,
No.4/755, G.N.T.Road,
Padianallur, Chennai 600 52 ... Appellant

versus

1. The General Manager,
Bharat Petroleum Corporation Ltd,
Tondiarpet, Chennai 600 081.

2. The Territory Manager (Retail)
Bharat Petroleum Corporation Ltd,
Tondiarpet, Chennai 600 081. ... Respondents

Appeal filed under clause 15 of Letter patent against the order passed by this Court dated 02.01.2014 passed in WP No.28204 of 2012.

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified mandamus Calling for the records of the second respondent in CH.TR.41.05 dated 10.10.2012 and quash the same and consequently direct the respondents to extend and impelement Dispensing Pump and Selling License (DSPL) Agreement dated 6.1.2011

For Appellant : Mr.V.Ravi

For Respondents : Mr. O.R.Santhanakrishnan

J U D G M E N T
(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

Challenge in this intra Court Appeal is to the order of the learned Single Judge dated 02.01.2014 made in WP No.28204 of 2012, in and by which, the learned Single Judge had dismissed the Writ Petition with liberty to the appellant to seek appropriate remedy in terms of the Dispensing Pump and Selling License Agreement dated 06.01.2011.

2. The challenge in the Writ Petition was to the order of termination of the Dispensing Pump and Selling License (DSPL) Agreement dated 06.01.2011 for certain irregularities including stock variation. The contention of the appellant before the Writ Court was that the inspection was done in the absence of the partners of the appellant firm and the irregularities were committed by the employees without the knowledge of the partners. It was also contended that the appellant firm has been a dealer of the petroleum products with the respondent Company for over 65 years and there has been no compliant of any malpractice by the appellant firm in the past.

3. The Writ Petition was resisted by the respondent Corporation contending that at the time of surprise inspection carried out by the inspecting team, the following irregularities were found to exist.

1. Stock register was not maintained for HSD from 22.04.2012 to 27.04.2012 and for MS on 27.04.2012.
2. Stock variation of HSD was 23,553 litres which is 9.16% of the meter sales.
3. 8000 litres of HSD received vide invoice no.1306702019 dated 28.04.2012 was not accounted for in the stock register while MS received vide same invoice is shown on 27.04.2012.

4. According to the Corporation, as per the Marketing Discipline Guidelines 2005, the irregularities are punishable with termination of contract and no option is given to the officers of the Corporation, particularly where the irregularity complained is stock variation beyond the permissible limits. It is also the contention of the Corporation that there is a provision for arbitration in the contract and hence the Writ Petition is not maintainable.

5. The learned Single Judge, who heard the Writ Petition, dismissed the same mainly on the ground that there is an Arbitration Clause under Clause 19(a) of the Dispensing Pump and Selling license Agreement, dated 06.01.2011 and hence the Writ Petition cannot be entertained.

6. Aggrieved the appellant has come forward with this intra Court Appeal.

7. We have heard Mr.V.Ravi, learned counsel appearing for the appellant and Mr.O.R.Santhanakrishnan, learned counsel appearing for the respondent Oil Corporation.

8. Though Mr.V.Ravi, learned counsel appearing for the appellant would raise several contentions regarding the testing of the sample, we do not think that the same would arise in the present case as it is conceded by Mr.O.R.Santhanakrishnan, learned counsel appearing for the respondent Oil Corporation, that the samples taken from the Petrol Bunk of the appellant, had passed the test. Mr.O.R.Santhnakrishnan would point out that as per clause 9 the Marketing Discipline Guideline 2005 the penalty for the irregularity of stock variation, even if the sample passes the quality test is termination.

9. Mr.V.Ravi, learned counsel appearing for the appellant would contend that as per the new Marketing Discipline Guidelines which came into effect from 08.01.2013, the punishment for stock variation beyond permissible limit is suspension of sales and supply for 15 days for the first irregularity, 30 days for second irregularity and only the 3rd offence will lead termination of the dealership. Mr.V.Ravi, would also point out that the inspection in this case was done on 28.04.2012 and the order terminating the agreement was passed on 10.10.2012 and within two months thereafter the new Marketing Discipline Guidelines have come into force. Relying upon the above circumstances, Mr.Ravi, would plead that Corporation should consider a lesser punishment.

10. We have considered the rival submissions. It is admitted that the appellant had been a dealer of the respondent Corporation since 1965 till the termination on 10.10.2012, i.e. for over a period of 47 years. It is also not the case of the Corporation that the appellant was regular defaulter. There are no previous record for any irregularity committed by the appellant. The new Marketing Discipline Guideline has come into force on 08.01.2013, i.e. within three months from the date of termination. The termination itself was challenged in this Court and the Writ Petition came to be filed on 12.10.2012. The new Marketing Discipline Guidelines have come into force during the pendency of the Writ Petition.

11. The learned Single Judge however rejected the Writ Petition on the ground of availability of alternative remedy. The availability of alternate remedy is not an absolute bar for this Court to exercise its jurisdiction under Article 226 of the Constitution of India. While examining the equities in the case on hand, we find that the punishment of termination is rather harsh. In the light of the fact that there is no earlier

irregularity in the case on hand, we are of the considered opinion that ends of justice will be met by directing the Corporation to revisit the order of termination in the light of the New Marketing Discipline Guideline, which had come into force during the pendency of the Writ Petition, which provides for substantially lesser punishment for the same irregularity of stock variation.

12. We therefore direct the appellant to make a comprehensive representation seeking a review of the punishment imposed within a period of 4 weeks from the date of receipt of a copy of this order. If such representation is made, the Corporation shall take into account the New Marketing Discipline Guideline as well as the past record of the appellant and the fact that the appellant had been a dealer of the Corporation for nearly 52 years and decide on the quantum of punishment to be imposed for the irregularities that have been pointed out by the Quality Control Cell during the inspection on 28.04.2012. We are confident that the Corporation would reconsider the punishment sympathetically and redress the grievances of the appellant.

13. The intra Court appeal is disposed of with the above direction. However, in the circumstances there will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-v)

//True Copy//

Sub Assistant Registrar

jv

To
1. The General Manager,
Bharat Petroleum Corporation Ltd,
Tondiarpet, Chennai 600 081.

2. The Territory Manager (Retail)
Bharat Petroleum Corporation Ltd,
Tondiarpet, Chennai 600 081.

+1cc to Mr.V.Ravi, Advocate, S.R.No. 52677

W.A.No.1229 of 2014
and MP No.1 of 2014

VD(CO)
GN(10/09/2018)