

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 24TH DAY OF JULY 2018

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.A.Nos.360 & 361 of 2018

In the matter of Arbitration
and Conciliation Act, 2015
and

In the matter of dispute
between M/s. Captain
Palanisamy Service
Station and Indian Oil
Corporation
Ltd., under Agreement
dated 12.01.1999

M/s.Captain Palanisamy Service Station,
No.132, Omalur Main Road,
Salem 7
Represented by its Managing Partner
Mr.S.Kuppannan

...Applicant/Applicant
(O.A.Nos.360 & 361 of 2018)

-vs-

1.Executive Director,
TNSO, Indian Oil Corporation Limited,
Represented by its Deputy General Manager,
Marketing Division,
Tamil Nadu State Office,
No.139, Nungambakkam High Road,
Cehnnai 600 034

2.Indian Oil Corporation Limited,
Represented by its Deputy General Manager,
Marketing Division,
Salem Divisional Office,
No.234, First Floor, NH-7
Salem Bangalre by pass road
Kondalapatti,
Salem 636 010

...Respondents/Respondents
(O.A.Nos.360 & 361 of 2018)

O.A.No.360 of 2018

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the respondents, their men, agents, servants, or any one claiming under them or acting on their behalf from in any way stop the supply of petroleum products including petrol and diesel to the applicant service station pending disposal of the above application.

O.A.No.361 of 2018:

Original Application praying that this Hon'ble Court be pleased to order interim injunction restraining the respondents, their men, agents, servants or any one claiming or acting on their behalf from in any way proceeding further with the enquiry by virtue of show cause notice dated 09.10.2017 in Ref.SLM/SLM1/Captain pending disposal of the above application.

These Original Applications coming on this day before this Court for hearing the court made the following order:-

O.A.No.360 of 2018 has been filed by the applicant seeking an order of interim injunction restraining the respondents from in any way stopping the supply of petroleum products including petrol and diesel to the applicant service station pending disposal of the above arbitration.

O.A.No.361 of 2018 has been filed by the applicant seeking an order of interim injunction restraining the respondents from in any way proceeding further with the

enquiry by virtue of show cause notice dated 09.10.2017 in Reg.SLM/SLM1/CAPTAIN pending disposal of the above application.

2. The applicant is a dealer with the second respondent running a petroleum Bunk in the name of its Partnership Firm namely "Captain Palanisamy Service Station". The partnership firm has four partners and the applicant is represented by one of them being the Managing Partner. One of the partners seems to have had money transaction on his personal needs and there seems to be disputes over the same.

3. It is alleged in the affidavit that one of the partners K.P.Manoharan had issued a letter to the second respondent, based on which, a show cause notice dated 09.10.2017 was issued by the second respondent to the applicant-Firm. A reply was also issued by the applicant-Firm on 14.10.2017 for the said show cause notice. In the meanwhile, a letter dated 24.10.2017 was also issued by the second respondent to the applicant-Firm, for which, a suitable reply was also said to have been given on 06.11.2017 by the applicant-Firm. It is alleged that despite the fact that there is a personal transaction between Mr.Palanisamy and Mr.K.P.Manoharan, who are the partners, the second respondent had issued a show cause

notice without verifying the real facts. It is stated that there is no re-constitution of the Firm or there is no change in the same, as the Applicant-Firm is dealing and vending petroleum products of the second respondent as a retailer and the same is governed by the dealership agreement dated 12.01.1999. As per clause 56 (b) (2) of the dealership agreement, the second respondent is at liberty to terminate the agreement for any breach of the same. There is no breach of agreement nor any dissolution of the partnership. While so, it is not known why the show cause notice dated 09.10.2017 was issued, wherein, an explanation was sought for.

4. Admittedly, a Writ Petition No.29317 of 2017 was filed before this Court challenging the said show cause notice. It was conceded before this Court that it would suffice if a personal hearing is given to the applicant pursuant to the show cause notice. Accordingly, the writ petition was disposed of by this Court on 16.11.2017 directing the Indian Oil Corporation to give personal hearing to the applicant and its partners before passing final orders. Pursuant to the said order, the second respondent again issued a notice dated 01.03.2018 afresh to all the partners to attend personal hearing on 19.03.2018.

All partners except K.P.Manoharan were present and a personal hearing was conducted with all available

partners. The enquiry was again posted on 18.04.2018 to enable Mr.K.P.Manohran to attend.

5. In the meanwhile, it is alleged that the respondents are trying to terminate the dealership agreement. Even if there is any breach of agreement, as alleged, as per clause 67, it should be referred to a sole arbitrator. It is further stated that as between the parties, there are no disputes and on the other hand, there are only personal problems between the partners, which are totally unconnected to the partnership firm. It is further stated that the explanation given on 19.03.2018 before the first respondent was not taken into consideration by the respondents.

6. It is the apprehension of the applicant-Firm that the respondents are trying to take a decision on their own without referring the dispute, if any, to the Arbitrator as per the agreement. It is stated that if the respondents are allowed to terminate the agreement on their own, it would cause irreparable loss and hardship to the firm. In the reply dated 19.03.2018, it was specifically requested that as per clause 67, the dispute between the Indian Oil Corporation and partners should only be referred for arbitration. There seems to be no further response from the respondents. Hence, this Court on 16.04.2018 had

earlier passed an order in O.A.No.361 of 2018 restraining the respondents from continuing the proceedings fixed on 18.04.2018.

7. But a perusal of the record shows that while disposing of the writ petition, it is recorded by this Court that the learned counsel appearing for the Partnership Firm had only sought for a personal hearing. It was never stated that it is subject to Arbitration. The request of the petitioner was also conceded by the learned counsel appearing for Corporation and accordingly, this Court had granted an opportunity to the applicant for a personal hearing. While so, it is not open to the applicant to state that the respondents have got no powers and the same is to be referred only to an arbitration. The act of the applicant would amount to waiver. The applicant had deliberately and intentionally waived his remedy to go for arbitration. Even otherwise, according to the applicant, there is no breach of contract leading to a reference to Arbitration. It is only the apprehension of the applicant that the respondent-Corporation would terminate the agreement. The applicant had opted to go for the hearing before the authorities based on the show cause notice. Thus, the applicant has implied by its conduct that it did not want to invoke Arbitration clause.

contract, there is no arbitrable dispute. In the event of the authorities of respondent passing any orders after enquiry, there may arise a dispute for reference to arbitration. As on date, there is nothing on record to show that there is a dispute to be adjudicated by an Arbitral Tribunal. Therefore, the applications are devoid of any merits and liable to be dismissed.

8. Accordingly, these applications are dismissed.

Sd/-P.S.N.J

24.07.2018

//Certified to be a true copy//

Dated this the day of 2018

JJ 06.09.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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