

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2018

CORAM :

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.24146 of 2011,
M.P.Nos.1 & 2 of 2011 and W.M.P.No.10843 of 2016

Sarath Agencies

Rep. By its Proprietrix

Tmt. S.Sridevi

...Petitioner

Vs.

1. Hindustan Petroleum Corporation Ltd.
Rep. By its Chief Regional Manager - Retail
and duly constituted Attorney,
II Floor, Petro Bhawan, 82, T.T.K.Road,
Alwarpet, Chennai 600 018.

2. The Field Officer,
Hindustan Petroleum Corporation Ltd.
II Floor, Petro Bhawan, 82, T.T.K.Road,
Alwarpet, Chennai 600 018.

3. The Area Sales Manager,
Hindustan Petroleum Corporation Ltd.
II Floor, Petro Bhawan, 82, T.T.K.Road,
Alwarpet, Chennai 600 018.

...Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the proceedings of the first respondent herein under Ref: CH RRO/AKR/RET, dated 11.10.2011 in respect of the Petroleum Retail outlet of the petitioner, viz., M/s.Sarath Agencies at No.72/123, Kundrathur High road, Porur, Chennai and quash the same.

For Petitioner : Mr.A.R.L.Sundaresan,
Sr. Counsel for
Mr.H.Rajasekar

For Respondents: Mr.O.R.Santhanakrishnan

O R D E R

The termination of the dealership agreement, dated 23.2.2000 entered into between the respondent Corporation and the petitioner, vide letter under Ref No.CH RBO/AKR/RET, dated 11.10.2011 of the first respondent, is challenged in the writ petition.

2. According to the petitioner, the dealership was given in favour of the petitioner for a period of 15 years. The entire supply of products which are being sold at the petitioner's retail outlet are those which are supplied by the respondent Corporation. On 12.5.2008, an inspection was conducted in the retail outlet of the petitioner and it was stated that the density in respect of MS HSD and Power fuel were tested and that the variation in so far as HSD was alleged to be beyond permissible limit and in respect of MS and Power fuel there was a slight variation, but within the permissible limit. An inspection report was prepared by the respondents 2 and 3 herein and an endorsement was made that "all products sales suspended". On 24.6.2008, the first respondent issued a show cause noticed to the petitioner as to why action deemed fit, cannot be taken against the petitioner including termination of the said dealership on the ground that the samples which were taken on 12.5.2008 from the petitioner's retail outlet, does not meet the specifications. The petitioner gave reply, dated 29.6.2008 and 11.7.2008 to the show cause notice, dated 24.6.2008. On 5.9.2008, termination of dealership agreement was communicated to the petitioner. Petitioner gave further representations, dated 28.2.2011 and 1.3.2011 to the respondent Corporation. On 11.10.2011, the impugned order has been passed by the first respondent. Being aggrieved, the petitioner has filed the present writ petition before this Court.

3. At the time of admission on 21.10.2011, this Court granted status quo to be maintained as on the order passed by this Court. In paragraph 5 of the affidavit filed in support of the petition filed by the respondent Corporation in W.M.P.No.10843 of 2016, it is stated as follows:

"5. Landlady through her advocate has another notice, dated 1.4.2015 that she has removed the equipments of Corporation installed in the premises on 22.3.2015. The terminated dealer without adhering the Court order of status quo, dispossessed the Corporation from the Retail Outlet on 22.3.2015 by taking law into her own hands and illegally removed equipments belonging to the

Corporation such as Diesel Tank - 1, Petrol Tank - 1, Power Petrol Tank -1, MBD Pump - 1, Diesel Pump - 1, Petrol Pump - 2, L.P.G. Gas Tank - 2, L.P.G. Pump - 1, Canopy set - 1, L.P.G. Air Compressor, Racer Oil Advertisement Board - 1, Sing Board - 1. The total asset is worth Rs.1,33,30,957/- which the terminated dealer has forcibly removed.

4. At the outset, the petitioner has violated the status quo order passed by this Court on 21.10.2011. Secondly, it is submitted that the period of dealership agreement entered into between the parties, is also expired. Considering the facts of the case, as per clause 66 of the dealership agreement entered into between the parties, any dispute or difference of any nature whatsoever in relation to the dealership agreement shall be referred to the sole arbitration of the Managing Director of the Corporation or an Officer of the Corporation who may be nominated by the Managing Director. The petitioner ought to have invoked Clause 66 of the dealership agreement. Therefore, on any account, the writ petition is not maintainable before this Court. It is open to the parties seeks remedy before the appropriate forum.

Accordingly, the writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Regional Manager - Retail,
Hindustan Petroleum Corporation Ltd.
II Floor, Petro Bhawan,
No.82, T.T.K.Road, Alwarpet,
Chennai 600 018.
2. The Field Officer,
Hindustan Petroleum Corporation Ltd.
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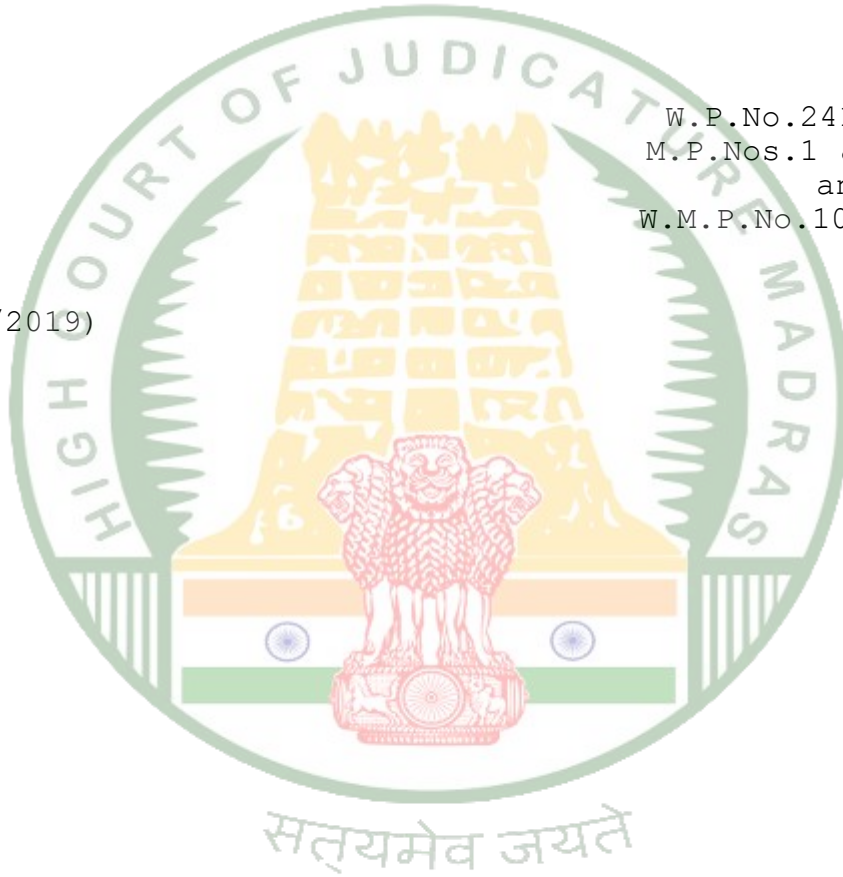
3. The Area Sales Manager,
Hindustan Petroleum Corporation Ltd.
II Floor, Petro Bhawan,
82, T.T.K.Road, Alwarpet,
Chennai 600 018.

+1cc to Mr.H.Rajasekar, Advocate, S.R.No.86915

+1cc to Mr.O.R.Santhanakrishnan, Advocate, S.R.No.86969

W.P.No.24146 of 2011
M.P.Nos.1 & 2 of 2011
and
W.M.P.No.10843 of 2016

SR(CO)
KAK(31/01/2019)



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