

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	14/08/2018
Delivered on	21/08/2018

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THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.A.No.1752 of 2018 &
C.M.P.No.13997 of 2018

- 1.Appellate Authority,
Executive Director (Retail Sales),
Indian Oil Corporation Ltd.,
Indian Oil Bhawan, G-9, Ali Yavar Jung Marg,
Bandra (East), Mumbai - 400 051.
- 2.M/s.Indian Oil Corporation Ltd.,
Rep. by Executive Director,
Indian Oil Bhawan, No.139, Mahatma Gandhi Road,
(Nungambakkam High Road),
Chennai - 600 034.
- 3.The Chief Divisional Retail Sales Manager,
Indian Oil Corporation,
Marketing Division,
B-35, Shastri Road, Trichy. ... Appellants / Respondents
- vs.
- A.Sudhakar ... Respondent / Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 30.11.2017 passed by a learned Single
Judge of this Court in W.P.No.3344 of 2013.

filed under Article 226 of the Consitution of India praying for
the issuance of a Writ of Ceritorarified Mandamus Calling for
the records relating to the order dated 15.1.2013 passed by the
1st respondent confirming the order of Termination of dealership
of the petitioner passed by the 2nd respondent dated 21.9.2012
quash the same and consequently direct the 2nd respondent to
restore the dealership of the petitioner granted on 30.6.2006.

For Appellants : Mr.M.Ravindran, Senior Counsel
For Mr.R.Ravi

For Respondents : Mr.ARL.Sundaresan, Senior Counsel
For Mr.S.N.Partha Sarathy
For M/s.Chennai Law Associates

J U D G M E N T

K.KALYANASUNDARAM, J.

This appeal is directed against the order of the learned Single Judge dated 30.11.2017 passed in W.P.No.3344 of 2013.

2. The writ petitioner was appointed as a dealer for sale of Petrol and High Speed Diesel pursuant to the agreement of dealership dated 18.12.2006 initially for a period of 15 years and renewable for further period of one year each until determined by either party. The license was cancelled for the reasons that when a surprise inspection in the retail outlet was conducted on 09.09.2011, the Multi Disciplinary Inspection Team found stock variation beyond permissible limits, and the samples could not be drawn from the underground tanks of the outlet, as they were found dry and sale of the retail outlet has not been in line with the dealership agreement.

3. A show cause notice was issued, for which, the writ petitioner / respondent submitted reply. However, the second respondent without affording an opportunity of personal hearing, terminated the dealership on 21.09.2012. Aggrieved over the same, an appeal was preferred to the first respondent and the same was dismissed, confirming the order of the second respondent. The order of termination was challenged by the writ petitioner before this Court.

4.The Writ Court, set aside the order of termination by observing that the detailed representation of the petitioner was neither considered by the the second respondent / original authority nor the first respondent / Appellate Authority. It is further stated that the petitioner has not committed any irregularities viz., adulteration etc., and that he suffered loss due to leakage in hand pump and excess supply of fuel.

5. Mr.M.Ravindran, learned Senior Counsel for the appellants submitted that as per the agreement entered into between the appellants and respondent, if any violation found during inspection would result in termination of dealership and the Court cannot show any sympathy for ordering restoration of the dealership.

6. Per contra, it is argued by Mr.ARL.Sundaresan, learned Senior Counsel for the respondent that the writ petitioner hails from a rural background with low rank of literacy and he had invested all his funds in developing his business as a dealer of the appellant Company. It is further argued that it is not the case of the appellants that on the date of inspection, the stock was found in excess and in case of shortage of stock, it shall be presumed that it was only due to leakage in hand pump or excess supply of fuel to the consumers, for which, the respondent cannot be penalized. It is further contended that the respondent was awarded Best Dealer Award in the year 2008 by the second respondent and no further proceedings were initiated against the respondent for violation of the dealership agreement and prayed for dismissal of Writ Appeal.

7. Heard rival submissions and perused the materials available on record.

8. In the instant case, it is not in dispute that the Multi Disciplinary Inspection Team during surprise inspection found stock variations beyond the permissible limits. The dealership license was cancelled mainly on the ground that on the date of inspection the Team, shortage of fuel was found beyond permissible limits. As rightly argued by the learned Senior Counsel for the respondent that it is not a case of excess stock found on the date of inspection and it was due to shortage of fuel. If the storage of stock is less, it should be only due to leakage in hand pump and excess supply fuel to the consumers. The Writ Court after carefully analyzing the entire aspects of this case had set aside the order of termination and directed the appellants to restore the dealership license.

9. In view of the above, we find no valid or good reasons to interfere in the order of the learned Single Judge. In fine, the Writ Appeal fails and the same is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS IX)

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Sub Assistant Registrar

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+1cc to Mr.S.N.Parthasarathy, Advocate SR.No.57540

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