

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.10.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4771 of 2013

M.P.No.2 of 2013

N.Balasubramanian,

Proprietor,

M/s.Shri Adhilakshmi Indane Gas Service,

109, Prabha Towers, Salem Main Road,

Bharathipuram, Dharmapuri - 636 705.

... Petitioner

-Vs-

1. The Chairman,

Indian Oil Corporation Limited,

Corporate Office,

3079/3, JB Tito Marg,

Sadiq Nagar, New Delhi - 110 049.

2. The Deputy General Manager (LPG),

Tamil Nadu State Office,

Indian Oil Corporation Limited,

Marketing Division, Southern Region,

'Indian Oil Bhavan',

139, Nungambakkam High Road,

Chennai - 600 034.

3. Senior Area Manager,

Indian Oil Corporation,

Marketing Division,

Indane Area Office,

8/1079, Avinashi Road,

Coimbatore - 641 018.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the second respondent in connection with the impugned show cause notices issued to the petitioner by the second respondent vide his proceedings in TNL/S2015, dated 31.01.2013 and his subsequent proceedings in TNL/S2015, dated

19.02.2013 sent to the petitioner through email dated 19.02.2013 and quash the same.

For Petitioner : Mr.S.Rajendiran

For Respondents : Mr.P.N.Radhakrishnan for R3
No appearance for R1 & R2

O R D E R

The show cause notice issued to the petitioner by the second respondent in proceedings dated 31.01.2013 and his subsequent proceedings in 19.02.2013 are under challenge in this writ petition.

2. The learned counsel for the writ petitioner made a submission that the petitioner is the Proprietor of M/s.Shri Adhilakshmi Indane Gas Service. The petitioner was appointed as a Distributor of Indane (LPG) of the respondent corporation at Dharmapuri as per the letter of appointment dated 08.09.2010. On receipt of complaint against the writ petitioner in respect of certain irregularities a show cause notice was issued to the writ petitioner in proceedings dated 31.01.2013. The said show cause notice impugned in the present writ petition is enclosed in the page No.51 of the typed set of papers filed along with the present writ petition. The impugned show cause notice states that during the investigation of complaint the experience certificate dated 11.02.2008 submitted by the writ petitioner and the appointment letter dated 03.05.2000 issued by the petitioner M/s.Ambika Agencies were verified and during the verification it was found that they were distinctly different. On account of such discrepancies in respect of the documents produced by the writ petitioner a show cause notice was issued to the petitioner requesting him to submit his explanation within a period of 15 days from the date of receipt of copy of the show cause notice. Once again the writ petitioner made a representation to furnish certain documents enabling the writ petitioner to submit his explanation in detail. The said request also has not been considered by the respondent and an order was passed on 19.02.2013.

3. The learned counsel for the writ petitioner states that the required documents and the copy of the complaint were not furnished to the writ petitioner enabling him to file his explanations / objections in respect of the show cause notice issued.

4. The learned counsel for the respondent disputed the contentions by stating that on receipt of the complaint against the writ petitioner, the preliminary investigations were

conducted and certain certificates produced by the writ petitioner were found distinctly different. On account of the discrepancies in the certificate, a show cause notice was issued. Thus, the writ petitioner himself is very well aware of such certificates and in possession of the same. Therefore, the petitioner ought to have submitted his objections / explanations in response to the show cause notice. Instead of doing so, he approached this Court by filing this writ petition and the respondents are unable to decide the matter for the past about five years on account of the pendency of the writ petition.

5. Allegations and the explanations now submitted in the writ petition by the petitioner cannot be considered by this Court under Article 226 of Constitution of India. All such allegations and explanations if any submitted shall be considered by the authorities competent with reference to the documents available. Thus, if any writ petition filed challenging the show cause notice, this Court cannot adjudicate the merits in relation to the allegations. It is left open to the writ petitioner to submit his explanations / objections on the show cause notice and the authorities competent are bound to consider all such explanations and documents if any filed and take a decision and pass orders.

6. No writ proceedings can be entertained against the show cause notice in a routine manner. The judicial review against the show cause notice is certainly limited. A show cause notice can be challenged, if the same has been issued by an incompetent authority having no jurisdiction or competency or if an allegation of malafides are raised or if the same is in violation of the statutory rules in force. Even in case of raising an allegation of malafides, the authority against whom such an allegations are raised is to be impleaded as party respondent in his personal capacity in the writ proceedings. In the absence of any one of these legal grounds, no writ proceedings can be entertained against the show cause notice.

7. Intermittent intervention in statutory proceedings are not desirable. Such intermittent interventions will cause prejudice to the completion of the statutory proceedings initiated by the competent authorities by invoking the provisions of the Act. Unless there is a legal ground to interfere, the High Courts must allow the authorities competent to proceed with the enquiry and conclude the same by providing opportunity to all the persons concerned. This being the scope of the proceedings, the High Courts must be cautious while entertaining the writ against the show cause notice. Stalling the statutory proceedings on the show cause notice will certainly affect the effective and efficient implementation of

the Statutes concern. Thus, in the event of any established legal grounds, no writ proceedings shall be admitted against the show cause notice. The Hon'ble Supreme Court also time and again emphasized that writ against the show cause notice cannot be entertained in a casual manner.

8. The learned counsel for the petitioner urged this Court by stating that the documents relied upon by the respondents were not furnished to the petitioner all such claims and requests shall be made to the respondents and the respondents also shall comply with the same by furnishing the copy of the complaint if any or the documents relied upon by the respondents. However, on receipt of any such informations / documents, the writ petitioner has to submit his explanations / objections in respect of the allegations and thereafter the authorities competent are bound to consider the same and pass orders on merits. Thus, the respondents are directed to furnish a copy of the complaint and the other enclosures if any within a period of 3 weeks from the date of receipt of the copy of the complaint from the respondents. The writ petitioner shall submit his explanations / objections within a period of 15 days from the date of receipt of the copy of the complaint from the respondents. Thereafter, the respondents are at liberty to consider all the materials available on record and pass orders on merits and in accordance with law within a period of 4 weeks thereafter.

9. With these directions the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Chairman,
Indian Oil Corporation Limited,
Corporate Office,
3079/3, JB Tito Marg,
Sadiq Nagar, New Delhi - 110 049.
2. The Deputy General Manager (LPG),
Tamil Nadu State Office,
Indian Oil Corporation Limited,
Marketing Division, Southern Region,
'Indian Oil Bhavan',
139, Nungambakkam High Road,
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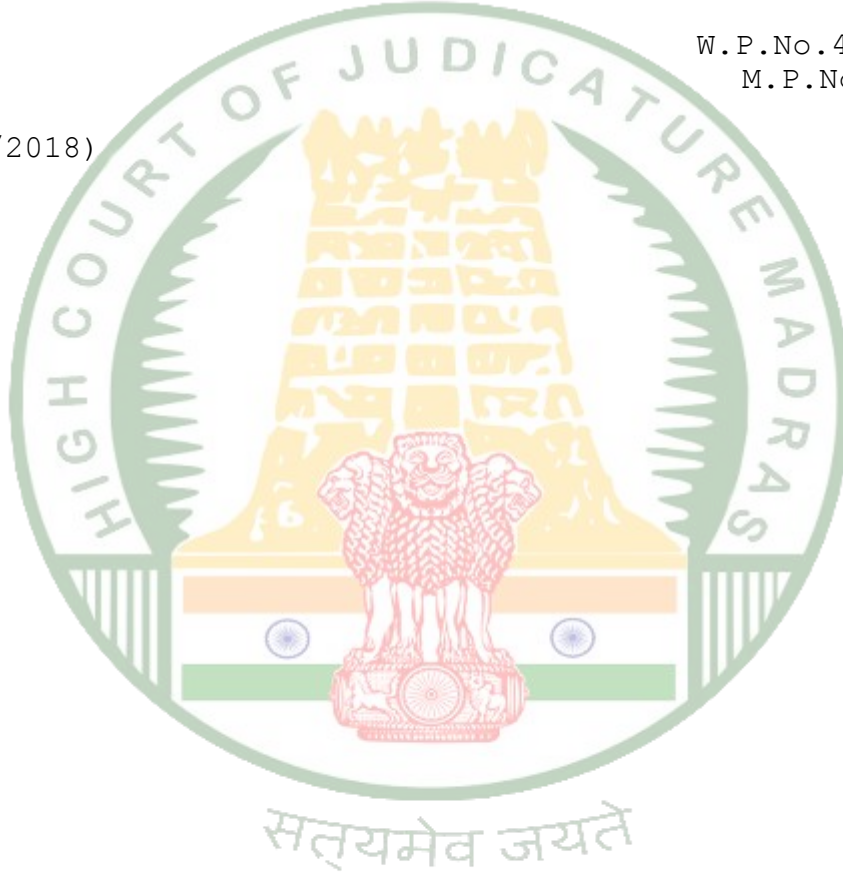
3. Senior Area Manager,
Indian Oil Corporation,
Marketing Division,
Indane Area Office,
8/1079, Avinashi Road,
Coimbatore - 641 018.

+2cc to Mr.S.Rajendiran, Advocate, S.R.No.71855

+1cc to Mr.P.N.Radhakrishnan, Advocate, S.R.No.72856

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GSP(14/11/2018)



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