IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2018

C O R A M

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

WP.No.23375 of 2017
and WMP.No.24467 of 2017

M/s.A.S.M.Abdul Cader & Company,
Represented by its Partner,
Mrs.Shamshaad,
having the place of business at
112/76, Chamiers Road,
Raja Annamalaipuram,
Chennai-600 028. ...Petitioner

Vs.

1. M/s.Bharat Petroleum Corporation Limited,
represented by its Territory Manager,
Chennai Territory Tondiarpet,
Chennai - 600 081

2.S.M.Aminudin

3. The Union of India,
Represented by its Secretary to Government,
Ministry of Petroleum and Natural Gas,
Shastri Bhavan,
New Delhi, Delhi - 110 001 ... Respondents

PRAYER

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus restraining the 1st respondent from suspending the supply of Petroleum products to M/s.A.S.M.Abdul Cader & Co., a Petrol Bunk, No.112/76, Chamiers Road, Raja Annamalaipuram, Chennai - 600 028 based on the letter of the 1st respondent in CHTR.1908.001 dated 09.08.2017.

For Petitioner : Mr.S.F.Mohamed Yousuf

For R1 : Mr.M.Vijayan,
for M/s.King & Partridge

O R D E R

The relief sought for in this writ petition is for restraining the 1st respondent from suspending the supply of Petroleum products to M/s.A.S.M.Abdul Cader & Co., a Petrol Bunk, No.112/76, Chamiers Road, Raja Annamalaipuram, Chennai - 600 028 based on the letter of the 1st respondent in CHTR.1908.001 dated 09.08.2017.

2. The learned counsel appearing on behalf of the writ petitioner states that the father of the writ petitioner late M.A.C.Abdul Azeez and his brothers late M.A.C Syed Mohamed and M.A.C.Abdul Dalil jointly owned A.S.M.Abdul Cader & Company and the Company was running the business establishment of Dispensing Pump and Selling license granted by the first respondent at 112/76, Chamiers Road, R.A.Puram, Chennai-78.

3. The learned counsel for the petitioner states that the licence in respect of the petrol bunk was granted by the first respondent in favour of M.A.C.Abdul Azeez and S.M.Aminudin in agreement dated 01.10.1979. Therefore, they cannot take a different stand in respect of certain developments took place within the family. It is contended that the changes made in respect of the partnership were informed to the first respondent/Company and they have not considered these aspects. Further it is the case of the change of partnership alone and the company is one and the same. Therefore, they cannot stop supply of petroleum products to the writ petitioner/Company. The learned counsel for the petitioner states that Civil Suit in respect of the disputes is pending in OS.No.210 of 2015. The first respondent/Bharath Petroleum Corporation Limited, is also a defendant in the said suit. The relief sought for in the suit is for permanent injunction against the original licence holder Mr.S.M.Aminudin, in respect of the possession of the petrol bunk by the writ petitioner and for mandatory injunction directing the Bharath Petroleum Corporation Limited to provide the plaintiff, the Dispensing Pump and Selling license in relation to M/s.A.S.M.Abdul Cader & company.

4.On reading of the prayer (b) in the suit filed in OS.No.210 of 2015, the writ petitioner has sought for the relief of mandatory injunction directing the second defendant to approve the plantiff as their dealer. Thus, it is clear that the writ petitioner had submitted the application and the relevant details to the first respondent and the same had not been considered for grant of dealership to the writ petitioner.

5. The learned counsel for the writ petitioner states that the said application along with the particulars were submitted in the year 2011 and the same has not been considered till today. Relying on a Judgment of the Hon'ble Supreme Court of India in the case of Bharat Petroleum Corporation Limited Vs. B.M.Motors and Others reported in (2014) 16 SCC 749, paragraph 11 of the Judgment is extracted as follows:

> "11. Respondent No.1 herein in its counter affidavit dated 31.01.14 have stated that in compliance of the direction of the High Court in the impugned judgment, it had sent the bank draft/pay order dated 10.6.2013 for a sum of Rs.8,64,650/- issued by Canara Bank Kannauj Branch to respondent nos. 2 and 3 herein towards the value of 100 litres of petrol per month for the period from June 1993 to June 2013. Respondent Nos. 2 and 3 in their letter dated 28.6.2013 shown as Annexure CA-2 to the counter affidavit of respondent no.1 have acknowledged the receipt of the said pay order and have stated that they have kept the said pay order as security and will not encash it till the final decision is taken by the Corporation in respect of reconstitution of the firm. It appears that the said pay order has not been encashed and had expired. Be that as it may the order passed by the High Court is, in our opinion, just and equitable inasmuch as, while it had protected the interests of the retiring partners- respondents 2 and 3, it had ensured that they do not frustrate either the agreement by which they had surrendered their rights in the profit and losses of the partnership or interfere with the smooth running of the business by the continuing partners, in breach of the decree passed in their favour. The arrangement arrived at between the partners may not have been disclosed to the petitioner corporation but such non-disclosure should not be allowed to result in termination of the agency especially when one of the parties is acting unreasonably or armtwisting the other party, to extract an extra pound of flesh from it. The petitioner-corporation would in such a case be expected as a public sector entity, to act fairly and objectively to prevent one party taking undeserved advantage over the other on technical or procedural grounds. There is no gain saying that while considering reconstitution of the partnership the petitioner-corporation shall be free to stipulate conditions that would protect

> its business interest, goodwill and reputation among its consumers.”

The learned counsel for the writ petitioner states that it is an arrangement arrived at between the partners as decided by the Hon'ble Supreme Court of India and therefore, the petitioner must be allowed to continue as a dealer of the first respondent/Corporation.

6. The learned counsel appearing on behalf of the first respondent/Corporation opposed the contentions of the writ petitioner by stating that the corporation is a public sector undertaking of the Government of India and distributorship will be granted to an individual / partnership / society, etc. and suitable Dispensing Pump and Selling License Agreement will be entered with the dealer. One such dealership was commissioned in the year 1965 under the name of A.S.M.Abdul Cader & Company. After the retirement of one of its partner, M.A.C.Syed Mohamed in the year 1975, the partnership was reconstituted with his son S.M.Aminuddin who is the second respondent in the present writ petition as a continuing partner and M.A.C.Abdul Azeez was freshly inducted into the partnership. Mr.S.M.Moinideen had not continue as a partner along with his father MAC.Syed Ahmed and MAC Abdul Asees, the new partner was the younger brother of the M.A.C.Syed Mohamed. On 16.10.2009, Mr.M.A.C.Abdul Azeez expired leaving behind his four daughters as his legal heirs. However, none of the legal heirs of M.A.C.Abdul Azeez was inducted into dealership by A.S.M.Abdul Cader & Company and a fresh Dispensing Pump and Selling License Agreement dated 30.08.2010 was executed between Bharath Petroleum Corporation Limited and Mr.S.M.Aminuddin as sole proprietor of A.S.M.Abdul Cader & Company. The dealership agreement was renewed for a further period of five years. The period of agreement expired on 16.03.2015 and a fresh agreement was not signed thereafter. As per clause 10 (h) of the said agreement, the licensee Mr.S.M.Aminuddin shall not assign license or part with the benefit thereof or grant any sub license to any person, firm or company. As per clause 10(s), the licensee shall not change the constitution of the licencee or admit new member as partner without obtaining the previous consent of Bharat Petroleum Corporation Limited in writing. The first respondent / corporation came to understand that there was a certain serious dispute arose in the family of S.M.Aminuddin.

7.May that as it be, this Court is of an opinion that the first respondent Corporation has to go by the terms and conditions of the agreement. However, they are bound by the regulations in respect of grant of dealership to an individual / partnership / society etc. The terms and conditions stipulated in the agreement are to be followed scrupulously by all concerned. In the present case, undoubtedly, the license agreement was entered into between the Bharath Petroleum Corporation Limited and Mr.M.A.C.Adbul Azeez and Mr.S.M.Aminuddin on the first day of October 1979. However, one of the partners in the said agreement dated 1st October 1979 was passed away on 16.10.2009. Thus, the said Aminuddin/second partner submitted an application to the Corporation for grant of licence in his name. Accordingly, the memorandum of agreement was entered into between the Bharath Petroleum Corporation Limited and Mr.S.M.Aminuddin on the 30th day of August 2010. The said agreement is enclosed in page 38 of the typed set of papers filed along with this writ petition. The said agreement contains the terms and conditions and in clause (1), it is stated that the period of licence is for five years and at the sole discretion of the Company, the same can be renewed. Clause (h) of the said agreement states that "shall not assign the license or part with the benefit thereof or grant any sub licence to any person / firm / company". Clause 10(s) further states that "the licensee shall not change the constitution of the licencee firm nor to dissolve the partnership nor admit new member as a partner nor allow any member to withdraw from the partnership without obtaining previous consent in writing of the company.

8. The learned counsel appearing for the respondent further states that as per the Rules, the Company has to upload the details of the dealers and the documents pertaining to the dealership.

9. In this regard, they sent a letter to the writ petitioner/Company on 09.08.2017. In the said letter, the company has stated that the said Mr.S.M.Aminuddin is required to confirm certain informations for establishing the operations of dealership as per approved constitution which is a mandatory requirement. However, the license holder Mr.S.M.Aminuddin has not provided any particulars through website.

10. The learned counsel for the petitioner states that the said letter dated 09.08.2017 was communicated to the writ petitioner. Then, it is a clear admission that the said S.M.Aminuddin, who is the licence holder is not in possession of the petrol bunk. Now, the learned counsel for the petitioner also clarifies that the licence holder Mr.S.M.Aminuddin as per the agreement is not in possession of the petrol bunk.

11. This court is of an undoubted opinion that the possession of the petrol bunk will not confer any right regarding the licence. The Corporation has to grant license in accordance with the terms and conditions and as per the rules in force. Admittedly, license has not yet been given in favour of

the writ petitioner. The original license holder Mr.S.M.Aminuddin, is not running the petrol bunk as per the statement made by the learned counsel for the petitioner. Thus, it is for the Corporation to consider the case of the writ petitioner for the purpose of grant of licence and agreement in accordance with law. This apart, as of now, the writ petitioner is not having any valid license and therefore, the relief as such sought for cannot be granted. The licence granted in favour of Mr.S.M.Aminudin also expired in the year 2015.

12. In the event of considering the case of the writ petitioner for grant of fresh license in accordance with rules, then alone, the writ petitioner will acquire right for the purpose of insisting the Corporation for supply of petroleum products. Thus, the writ petitioner is not holding any licence to run the petrol bunk and in the interest of public at large, a non-licence holder cannot be allowed to run a petrol bunk.

13. With the above observations, the writ petition stands dismissed. However, there is no order as to costs. Consequently the connected miscellaneous petition is closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Territory Manager,
M/s.Bharat Petroleum Corporation Limited,
Chennai Territory Tondiarpet,
Chennai - 600 081

2. The Secretary to Government,
The Union of India,
Ministry of Petroleum and Natural Gas,
Shastri Bhavan,
New Delhi, Delhi - 110 001

+1cc to Mr.S.F.MOHAMED YOUSUF, Advocate, S.R.No. 30969
+1cc to Mr.KING & PARTRIDGE, Advocate, S.R.No. 30573

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TR(09/05/2018)