

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2018

CORAM

THE HONOURABLE MR.JUSTICE K. RAVICHANDRABAABU

W.P.No.1381 of 2018

and

W.M.P.No.1751 of 2018

G.K.M.Indane Gas Service  
rep. By its Proprietrix,  
Mrs.Vimala  
142 (244-A), Cuddalore Main Road,  
Ammamet,  
Salem-3. .... Petitioner

vs.

Indian Oil Corporation Ltd.,  
rep. By its Deputy General Manager (LPG-S)  
Marketing Division,  
Indane Area Office,  
8/1079, Avinashi Road,  
Coimbatore - 641 018 ....Respondent

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the records of the impugned order of Transfer of customers dated 05.01.2018 vide CBE AO: GKM issued by the respondent herein and quash the same.

For Petitioner : Mr.M.R.Jothimanian  
For Respondent : Mr.Abdul Saleem,  
Standing counsel.

O R D E R

Mr.Abdul Saleem, learned Standing counsel takes notice for the respondent. By consent of the parties, the main writ petition is taken up for final disposal.

2. The petitioner is aggrieved against the order issued by the respondent dated 05.01.2018 transferring 2500 customers from the petitioner's distributorship to another distributorship by name Ponni Co-operative Super Market, Salem, on or before 25.01.2018.

3. Heard Mr.M.R.Jothimanian, learned counsel for the petitioner and Mr.Abdul Saleem, learned Standing Counsel appearing for the respondent.

4. The main contention raised in this writ petition against the impugned order is that the petitioner was not put on notice before passing the impugned order. In other words, it is the grievance of the petitioner that no opportunity of being heard was given to them before the impugned transfer order was made.

5. Learned counsel for the respondent, based on instructions, submitted that no notice was served on the petitioner before passing the impugned order of transfer and however, he further submitted that the petitioner is not entitled to question the transfer, as such power has been upheld by this Court.

6. The issue as to whether the Petroleum Companies are empowered to transfer the consumers from one distributorship to another distributorship has already been considered by this Court in very many cases earlier and it was held that the Petroleum Companies are empowered to do so, as such power is within their jurisdiction. Therefore, the petitioner cannot question the power of transfer. But at the same time, in the earlier orders passed by this Court, it was observed that the right of transferring the customers from one distributorship to another is to be exercised after hearing the petitioner like person to find out as to whether they have exceeded their sealing limit. The relevant observations made in the earlier order in W.P.No.21138/2017 etc. dated 14.12.2017 reads as follows:

2.The issue involved in these cases has already been considered by this Court in W.P.No.27166 of 2017, wherein, after taking note of the order passed by the Division Bench of the Madurai Bench of this Court in W.P.(MD) No.12607 of 2017 dated 07.07.2017 followed in W.P.(MD) Nos.18923 to 18927 of 2017, etc., dated 30.10.2017, this Court disposed the said writ petition by directing the respondents therein to issue notice to the petitioner therein before effecting transfer and thereafter, to pass necessary orders within a period of two weeks, after affording an opportunity of hearing to the petitioner therein. The said order reads as follows:

"The prayer sought for in this writ petition is to forbear the respondents in any manner compelling the petitioner to transfer the petitioner's LPG customers to any new / other distributor.

2 It is seen that the issue involved in this case has already been considered by the learned single Judge of this Court at Madurai Bench of Madras High Court, by passing a common order in WP(MD) Nos.18923 to 18927 of 2017 etc., batch dated 30.10.2017 by following the order passed by the Division Bench in WP(MD).No.12607 of 2017 dated 07.07.2017. The common order passed by the learned Single Judge reads as follows:

"At this juncture, the learned counsel for the respondents would submit that when the similar issue came up for consideration before the Hon'ble Division Bench of this Court in P.Radhakrishnan Vs. Union of India and others [W.P.(MD) No.12607 of 2017] decided on 07.07.2017, while dismissing the said writ petition, it has been observed as follows:

"3. The Petroleum companies are empowered to transfer the consumers from one distributorship to another distributorship, in case, within the jurisdiction there are customers more than the ceiling. Such being the position, there is no merit in the contention taken by the petitioner.

4. We deprecate the practise of filing writ petition, immediately after making representation.

5. We dismiss the writ petition with cost quantified at Rs.5,000/-....."

Therefore, it is prayed that these writ petition have to be dismissed at the threshold with costs.

4. The right of transfer of customers from one distributorship to another distributorship is vested with the respondent Corporation and the same has been duly affirmed by the Hon'ble Division Bench of this Court in the case afore-stated. There is no quarrel

with the above proposition. But, at the same time, it should be remembered that without informing as to whether the petitioner agencies have exceeded the ceiling limit, the respondent Corporation cannot unilaterally transfer its customers, which not only affects the agencies, but is also detrimental to the interest of customers.

5. Therefore, all these writ petitions are disposed of, directing the respondents to issue notice to the petitioners before effecting transfer and thereafter, pass necessary orders on the matter within a period of two weeks from the date of receipt of a copy of this order, after affording an opportunity of hearing to the petitioners. No costs. Consequently, connected miscellaneous petitions are closed."

3. Upon considering the claim made by the petitioner in this writ petition and perusing the order passed by the learned Single Judge of this Court in the above said batch of cases, I am of the view that this writ petition is also covered by the above said decision. Accordingly, this writ petition is disposed of, by directing the respondents to issue notice to the petitioner before effecting transfer and thereafter, pass necessary orders on the matter, within a period of two weeks, after affording an opportunity of hearing to the petitioner. No costs. Consequently, connected miscellaneous petition is closed."

3. Considering the fact that all these writ petitions are also similar in nature, all these writ petitions are disposed of, by directing the respondents to issue notice to the respective petitioner before effecting transfer and thereafter, to pass necessary orders on the matter, within a period of two weeks, after affording an opportunity of hearing to the respective petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

7. In this case, even though an order was already passed which is impugned in this writ petition, admittedly, the same has been passed without issuing notice to the petitioner. Therefore, by following the earlier order passed by this Court as extracted supra, the impugned order is liable to be set aside only on the ground of violation of principles of natural justice. Accordingly, the writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the respondent for issuing notice to the petitioner and thereafter pass orders on merits after affording opportunity of hearing to the petitioner as well. The whole exercise shall be done by the respondent within a period of three weeks from the date of receipt of a copy of this order. Till such time, status quo as on today shall be maintained. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (CS-iv)

//True Copy//

Sub Assistant Registrar

vsi

To  
The Deputy General Manager (LPG-S)  
Indian Oil Corporation Ltd.,  
Marketing Division,  
Indane Area Office,  
8/1079, Avinashi Road,  
Coimbatore - 641 018

+1cc to Mr. JOTHI MANION, Advocate, S.R.No. 6155  
+1cc to Mr. ABDUL SALEEM Advocate, S.R.No. 6371

W.P.No.1381 of 2018

NRK (CO)  
TR(06/02/2018)

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