

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2018

Coram

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.23219 of 2008
and
M.P.Nos.1 of 2008 & 1 of 2010

Sri Venkatesa Traders
Rep. by Smt.Vathsala, Partner
Carrying on business at
37/2D, Salem Main Road
Mettur Dam - 2, Salem District.

(Name of Smt.Vathsala is substituted in
the place of Mr.G.Ravi as per the order
of this Court dated 28.06.2018 made in
W.M.P.No.32990 of 2017)

... Petitioner

vs

Indian Oil Corporation Ltd.,
Rep. by its
Divisional Retail Sale Manager
Marketing Division
Salem Divisional Office
Indian Oil Officers Quarters, I floor,
No.74, Rasi Nagar, Jagir
Ammapalayam. Salem - 636 302.

... Respondent

This Writ Petition has been filed under Article 226 of the
Constitution of India, praying to issue a writ of Certiorarified
mandamus to call for the records of the Respondent's
proceedings dated 17.09.2008 bearing No.SLMDO/R/3113 and quash
the same and direct the respondent to continue to supply the
petroleum products.

For petitioner: Mr.M.R. Jothimanian

For Respondent: Mr. Abdul Saleem for
Mrs. Anand Abdul and Vinoth Associates

O R D E R

The petitioner has filed this petition to quash the proceedings of the respondent dated 17.09.2008 bearing No.SLMDO/R/3113 and to direct the respondent to continue to supply the petroleum products.

2. The petitioner and her husband were running a Partnership firm in the name of Sri Venkatesa Traders, 37/2D, Salem Main Road, Mettur Dam - 2, Salem District. Since the petitioner G.Ravi died on 29.01.2013, his wife Vathsala has been substituted in this Writ Petition. The petitioner firm engaged in the dealership business with Indian Oil Corporation Ltd., from the year 1972 in the name of M.K.Srinivasan and M.K.Gopalan as partners. Thiru.M.K.Gopalan is the father-in-law of the petitioner and after his death, the petitioner G.Ravi was inducted as a partner in the said firm with the permission of the respondent on 02.05.1995. By letter dated 23.06.2008, the respondent has requested the petitioner to furnish the status of Partnership of the petitioner firm. It has been stated in the letter that by letter dated 05.06.2008 one Thiru.M.Kannan advised the Commercial Tax Officer (CTO) about the retirement of Partner Vathsala from the Partnership and Thiru.M.Kannan has assigned as Managing partner. It was observed from the letter of CTO, Omalur that the said Kannan entered as a new partner in the petitioner's firm on 10.07.2005 and that Smt.Vathsala had reigned on 15.09.2005 from the said firm and that the partners were advised to give explanation within 5 days about the status of Partnership of the petitioner.

3. The petitioner by a reply dated 27.06.2008 informed the respondent that the firm's name is Sri Venkatesa Traders and it is nothing to do with the firm namely Sri Venkateswara Traders and that no letter has been addressed to the CTO about the retirement of a Partner Smt.Vathsala from the firm M/s.Venkatesa Traders and for including Thiru.M.Kannan as new Partner or Managing Partner. The petitioner has also contended that the petitioners firm has not been reconstituted and Mrs.Vathsala being the wife of the deceased petitioner, they continued to be the partners of the petitioner's firm.

4. The learned counsel for the petitioner further contended that the respondent without holding any enquiry, by letter dated 17.09.2008 unilaterally, arbitrarily and flouting the principals of natural justice, suspended the dealership. He further contended that the petitioner had financial dealing with the said M.Kannan and the said person has requested proper security for the amount advanced by him, namely Rs.14,00,000/- for which he had taken signatures of the petitioner in the blank papers, which probably he has misused. In this regard, a

complaint has given to the Superintendent of Police, Salem District on 28.09.2006 and no action has been taken so far by the Police authorities. It is seen that the said Kannan filed Application form 'A' for registration under Rule 4 (8) of TNVAT Rules 2007 on 02.02.2007 and had obtained TIN Certificate from CTO, Omalur. On a complaint given by the petitioner to the CTO, a show cause notice has been issued calling upon the said Kannan to show cause why the registration should not be cancelled. Both the complaints given to the Police as well as to the CTO are still pending.

5. The learned counsel for the petitioner would also contend that pursuant to the order of suspension, the petitioners have to close the Petrol Bunk outlet from 18.09.2008 and as they have invested a huge amount and their customers are diverted to other dealers and that they are having stock worth about Rs.6,00,000/-, the respondent should have waited for the enquiry to be conducted by the Police and the CTO. But the respondent without doing so and also without considering the explanation given by them, has suspended the dealership hastily.

6. The learned counsel for the petitioner also contended that even assuming that Thiru.kannan has become a partner of a firm, the same shall not amount to violation of any conditions, since adding a new Partner cannot be a violation of any conditions. Hence, having no other alternative and efficacious remedy, the petitioner is before this Court by way of this Writ petition.

7. This Court by an Interim order dated 23.09.2008 passed the following order:

Mr.K.Venkatapathy, learned senior counsel appearing for the petitioner submitted that the respondent has sent the notice dated 23.06.2008 alleging that the petitioner has entered into a new partnership agreement, which was denied by the petitioner in their reply dated 27.06.2008, but without considering it, the respondent has passed the impugned notice dated 17.09.2008 and prayed for granting interim stay.

2. Considering the said submission of the learned senior counsel for the petitioner, there will be an interim stay. notice.

8. The respondent has filed a vacate stay petition stating that the writ petition itself is not maintainable and the petitioner has misrepresented and made false averments in his pleadings so as to obtain an interim order. He has submitted that the question of facts has to be decided only before the Civil Court. As per Clause -61 (a) of the Contract Agreement, all the disputes between the parties have to be resolved only by an Arbitrator. Therefore, the writ petitioner is not entitled for any relief under Article 226 of the Constitution of India as the said Contract Agreement has an Arbitration Clause and the same is binding on both the parties. Clause 61(a) reads as follows:-

"61(a) Any dispute or difference of any nature whatsoever, any claim, cross-claim, counter-claim or set-off or regarding any right, liability, act, omission on account of any of the parties hereto arising out of or in relation to this agreement be referred to the sole arbitration of the Director (Marketing) of the Corporation who may either himself act as the arbitrator or nominate some other officer of the corporation to act as the arbitrator. The Dealer will not be entitled to raise any objection to any such Arbitrator on the ground that the Arbitrator is an officer of the Corporation."

Pursuant to the suspension proceedings, a show cause notice dated 19.09.2008 was issued to the petitioner and the writ petitioner after receiving the same, has also sent an explanation dated 24.09.2008. The respondent also submitted in their counter affidavit that since Interim stay was granted by this Court, they are not able to proceed with the case further and therefore, they have filed a petition seeking to vacate the Interim stay and praying to dismiss the writ petition and direct the petitioner to approach the respondent for further adjudication of the concerned matter.

9. Heard both sides and perused the materials available on record.

10. On a perusal of records, it is seen that respondent has sent the notice dated 23.06.2008 alleging that the petitioner has entered into a new partnership agreement and one of the partners Vathsala had resigned from the partnership and one Kannan had been inducted and arrayed as Managing Director. Eventhough the petitioner had denied the same in their reply

dated 27.06.2008, the respondent had passed the impugned letter dated 17.09.2008 suspending the dealership. Challenging the same, the petitioner Ravi has filed this Writ Petition.

11. During the pendency of this writ petition, the Writ Petitioner Ravi died and therefore, his wife Vathsala was substituted as petitioner in the place of Ravi. On perusal of the records, it is seen that this Court, while admitting the Writ Petition on 23.09.2008, has granted interim stay of the impugned letter dated 17.09.2008. Eventhough the respondent has filed a petition to vacate the interim stay in the year 2010, no order has been passed in the said petition. Hence, due to the interim stay granted, the respondent had supplied the materials till date to the petitioner. Meanwhile, the petitioner has sent a request to the respondent for reconstitution of the firm inducting one Chitra as partner and this was not accepted by the respondent and they have not considered the same. The petitioner has filed W.P.No.33695 of 2013 challenging the non-consideration order and this Court has passed the following order :-

"6. In the light of the above submission, this Court is inclined to pass the following order:-

(i) The impugned order passed by the respondent Corporation is set aside.

(ii) The respondent Corporation is directed to consider the application dated 29.04.2013 in accordance with law and pass orders as expeditiously as possible preferably within a period of six weeks from the date of receipt of a copy of the order subject to the condition to be imposed by the Corporation."

12. When this matter was taken up for final disposal, this Court directed the petitioner counsel to find out the present status of the complaint pending before the police department as well as the petition before the Commercial Tax Officer. The petitioner counsel has filed an Additional Typed set of papers, wherein it could be seen that on 04.11.2017, the respondent Indian Oil Corporation has communicated by RPAD that as per orders of this Court, the Corporation has reiterated that any such approval of reconstitution proposal shall be subject to the orders of W.P.No.23219 of 2008 and the petitioner cannot claim equity at that stage. The Hon'ble Court also in the earlier Writ Petition has observed that the Indian Oil Corporation can impose any conditions as required and process the application at

the earliest. As per the said order, the respondent has considered the petitioner's application on merits and passed orders that subject to the final orders to be passed in this Writ Petition No.23219 of 2008, the proposal for reconstitution of the subject RO dealership by induction of one S.Chitra is approved 'in principle' with the following shares:-

1. Smt.R.Vathsala - 51% share
2. Smt.S.Chitra - 49% Share

and they were directed to send some of the documents for consideration. As per the said communication, the petitioner was directed to deposit Rs.5,00,000/- towards reconstitution fee and the same was also paid by the petitioner on 22.11.2017, which is found in page No.9 of the Additional Typed Set of Papers filed by the petitioner. The Retail Outlet Dealership Agreement for Corporation Owner / Leased Sites was also signed by both the petitioner and the respondent as found in Page No.12 of the Additional Typed Set of Papers. It was also stated by the learned counsel for the petitioner that the Commercial Tax Officer has passed an order rejecting the application filed by the said Manager of the firm Mr.M.Kannan and the TIN Number granted was also cancelled. Hence, it is clear that Smt.Vathsala is still holding 51% share in the said dealership and as per reconstitution, one Chitra has been inducted, which has been approved by the respondent subject to the outcome of the present Writ Petition.

13. The contention of the petitioner is that till an arbitration proceedings is initiated and decided, the petitioner is considered to be a dealer of the respondent and prays that the respondent has to be directed to supply all the materials without any interruption till the disposal of the arbitration proceedings.

14. In view of the above, it is open to both the parties to seek for alternate remedy as per the Agreement Clause 61(a). If the petitioner decides to file a petition for initiation of arbitration proceedings, the petitioner has to file the same within one month from the date of receipt of a copy of this order and the Arbitrator is directed to decide and pass orders on the same within a period of six months from the date of filing of the Arbitration Proceedings. The petitioner is directed to cooperate with the respondent for early disposal regarding this issue. Further, the respondent/Indian Oil Corporation Limited is directed to maintain status quo regarding the supply of oil and all the other products which were supplied earlier to the writ petitioner stockist till the Arbitration proceedings come to an end by passing of an award by the Arbitrator.

15. With the above direction, this writ petition is disposed of. Consequently, connected Miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vum/mra

To

Divisional Retail Sale Manager
Indian Oil Corporation Ltd.,
Marketing Division
Salem Divisional Office
Indian Oil Officers Quarters, I floor,
No.74, Rasi Nagar, Jagir
Ammapalayam. Salem - 636302.

+1cc to Mr.M.R.Jothimanian, Advocate Sr.52644

+1cc to M/S.Anand Abdul & Vinodh Associates, Sr.52592

W.P.No.23219 of 2008 and
M.P.Nos.1 of 2008 & 1 of 2010

kji[col]
srg 3/9/2018

WEB COPY