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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2018

CORAM :

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P. (MD) No.1963 of 2018

and

W.M.P. (MD) Nos.2212 & 2213 of 2018

Thirupathi Gas Service,
Through its Partner,
Mr.V.Srinivasan,
5/7, Theppakulam Street,
Ettayapuram,
Tuticorin District - 628 902.

... Petitioner

Vs.

1. The Union of India,
Represented by the Secretary,
Ministry of Petroleum and Natural Gas,
Shastri Bhavan,
New Delhi.

2. The Chief Area Manager,
Indian Oil Corporation Ltd.,
Indane Area Office,
No.2, Race Course Road,
Chokkikulam,
Madurai - 625 002.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records of the Notification in P-20019/2/2016-LPG, dated 23.06.2016 clause 2.4.1.1.1. Market Ceiling and consequential Circular Ref.No.SL/1601, dated 04.01.2018 and quash the same and forbearing the respondents, their men, servants or agents or anyone claiming under them from in any manner compelling the petitioner to transfer the petitioner's LPG Consumers to any new/other Distributor, within a period stipulated by this Court.

For Petitioner : Mr.A.Haja Mohideen

For R-1 : Mr.C.Nandagopal

For R-2 : Mrs.Hema Sampath,
Senior Counsel

for Mr.K.Muralidharan

**O R D E R**

(Order of the Court was made by **M. SATHYANARAYANAN, J.**)

By consent, the writ petition is taken up for final disposal.

2. Mr.C.Nandagopal, learned counsel is appearing for the first respondent. Mr.K.Muraleedharan, learned counsel is appearing for the second respondent and he is leading by Mrs.Hema Sampath, learned Senior counsel.

3. The writ petitioner was granted distributorship for Liquefied Petroleum Gas (LPG) by the second respondent for the Territory / Distribution area of Ettayapuram, Thoothukudi District and an agreement dated 18.03.2009, also came into being between the writ petitioner and the second respondent.

4. The petitioner, after award of the LPG distributorship, worked very hard to improve the business and as a result of the hard work, very many customers got enrolled in his agency and in the process, he has extended the business for the second respondent also. The writ petitioner also claim that he had invested a huge amount of Rs.15 lakhs by way of deposit and also spent several lakhs of rupees to create and improve the infrastructure in the form of vehicles, construction of godown etc., and also employed very many persons as delivery boys and for that also, he has complied with the relevant labour laws in the form of contribution by way of Employees State Insurance and Employees Provident Fund.

5. To shock and surprise, the petitioner was informed that there was a mass transfer of consumers from his gas agency to a newly constituted gas agency and according to him, the same would offend under Article 19(1)(g) and 21 of the Constitution of India. The petitioner, made a challenge to the impugned circular of the second respondent, dated 04.01.2018, in and by which, there was a Market Restructuring and Transfer of Customers.

6. The writ petition was entertained and initially interim order of *status quo* was granted in favour of the petitioner and the second respondent has filed a counter affidavit and took a stand that as per Clause 1(b)(iii) of the agreement entered into between the writ petitioner and the second respondent / Corporation, its sole discretion to reduce, restrict, modify or alter the area of distributorship territory without notice to the agent and as per Clause (iv), the Corporation is entitled to enlarge, reduce, increase or modify the area or territory to such other place as may be authorised by the Corporation and the distributor like the writ petitioner has no say in the matter. It is further averred by the second respondent that in terms of Clause (ii) of the agreement, "the Distributor shall faithfully



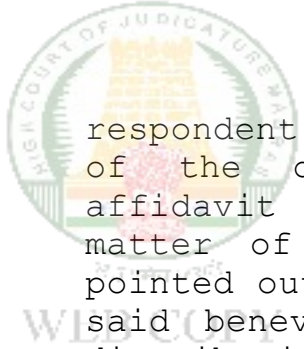
and diligently observe and carry out all directions, orders, terms and conditions as may be issued by the Corporation, from time to time and as may be contained in the Corporation's "Indane Manual" and any amendments or modifications as may be made by the Corporation thereto from time to time. The Distributor hereby confirms that he has received the copy of the Indane Manual and the General Directions as circulated by the Corporation on the date of this and Agreement and agrees to abide by and perform the same".

7. Therefore, the second respondent took a stand that the writ petitioner/distributor cannot claim any exclusive proprietary right either on customers or the distributorship and his agency is only to act on behalf of the Indian Oil Corporation and his functions are not independent insofar as the policy and implementation of the guidelines and administrative orders of the IOC is concerned.

8. The attention of this Court was also drawn to the relevant Clause in the distributorship agreement between the writ petitioner and the second respondent, wherein, the Corporation reserves the right, without any reference to or consent of the Distributor, to appoint one or more additional distributors in the same territory referred to in cause 1(a) above and such additional distributors or distributors shall be entitled to make sales of Indane in the same territory without any objection from the Distributor and the Distributors shall not be entitled to claim any over-riding remuneration, commission or allowance for the purpose.

9. The second respondent also took a stand that the transfer of the customers would depend upon the feasibility, demand and remuneration and appointment of more distributorship is to secure facility to the customers and the Government had also formulated a policy in this regard and therefore, the impugned circular has been issued strictly in accordance with the said guidelines and prays for dismissal of the writ petition.

10. The learned counsel for the petitioner invited the attention of this Court to the typed set of documents and would submit that as per the agreement dated 18.03.2009, the writ petitioner has been awarded distributorship and he has also improved his business and in the process, which also benefited the second respondent Corporation and for improving the business, he has also invested huge sums of money in men and material. All of a sudden, under the guise of the policy decision, majority of the consumers are sought to be transferred to some other agency and his expectations of improvement in business also affected and the same would confine under Article 19(1)(g) and 21 of the Constitution of India and prays for interference.



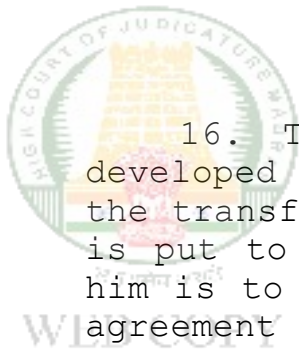
respondent would submit that in the light of the relevant Clauses of the distributorship agreement extracted in the counter affidavit filed in the writ petition, the writ petitioner, as a matter of right, cannot claim the consumer lease and further pointed out that the petitioner himself was the beneficiary of the said benevolence for the reason that at the time of grant of distribution, the petitioner is suffering with small number of Members and consumer from other agencies were also transferred and thereby he improved his business and as such, it is not open to him to turn over to make a complaint as to the policy decision.

12. It is also brought to the knowledge of this Court by the learned Senior counsel appearing for the second respondent that the petitioner, before filing the writ petition, has filed the suit in O.S.No.96 of 2017 on the file of the Court of District Munsif at Kovilpatti, against the very same respondents praying for judgment and decree to declare that the notice dated 12.04.2017, directing the transfer of 2000 customers from him as null and void and also for permanent injunction restraining the defendants and their men and agents from transferring customers from the distributorship of the plaintiff in any manner, pursuant to the notice dated 12.04.2017 and simultaneously, moved the writ petition in W.P.(MD).No.17158 of 2017 and got an order of status quo and thereafter, withdrawn the suit and however, in the affidavit filed in support of the said writ petition, the fact of filing the suit has not been disclosed.

13. It is also contended by the learned Senior counsel that the matter in issue also pertains to interpretation of the Clause of the distributorship agreement and the remedy open to the petitioner is to invoke the arbitration Clause 37 and in the light of the effective alternative remedy, the present writ petition is not maintainable and prays for dismissal of the same.

14. This Court has carefully considered the rival submissions and perused the materials placed before this Court.

15. It is settled position of law that the policy decision can be challenged on the ground of arbitrariness or mala fide or oblique motive and the petitioner admittedly did not make any such allegations or averments in the affidavit filed in support of this writ petition. A perusal of the distributorship Clauses in the distributorship agreement, which has been extracted in the counter affidavit of the present writ petition would disclose that the second respondent Corporation is having every right to transfer the consumers from one agency to another agency and it was also pointed out that the writ petitioner himself was the beneficiary of the said benevolence offered by the second respondent and as such, it is not open to him to make a complaint as to the said policy decision.



16. The petitioner is aggrieved by the fact that he is developed infrastructure by spending huge money and on account of the transfer of consumers from his agency to some other agency, he is put to financial hardship, difficulty, and the remedy open to him is to invoke the arbitration Clause 37 of the Distributorship agreement dated 18.03.2009.

17. The petitioner fails to make out any tenable or legal ground to his challenge made to the impugned circular.

18. In the considered opinion of the Court, the impugned circular issued by the second respondent, is having the object of benefiting the consumers by accommodating there from one agency to another agency and it is also taken in terms of the agreement as well as the policy decision formulated by the Government and therefore, in the absence of any arbitrariness or *mala fide*, it cannot be put to challenge.

19. In the considered opinion of the Court, the writ petition lacks merits and deserves dismissal and accordingly, dismissed. However, in the circumstances of the case, there shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are Closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

1. Union of India,
Represented by the Secretary,
Ministry of Petroleum and Natural Gas,
Shastri Bhavan,
New Delhi.

2. The Chief Area Manager,
Indian Oil Corporation Ltd.,
Indane Area Office,
No.2, Race Course Road,
Chokkikulam,
Madurai - 625 002.

+1cc to Mr.A.Haja Mohideen, Advocate Sr.No.55215
+1cc to Mr.C.Nandagopal, Advocate Sr.No.55319

AKV

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