



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:06.12.2018

CORAM:

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.24054 of 2018  
and W.M.P(MD)Nos.21759 & 21760 of 2018

M/s.Raja Bhuvaneswari Agencies,  
Rep. By Proprietor Sri A.Rajangam,  
S.No.502, Srinivasa Nagar,  
Andipatti,  
Theni District.

... Petitioner

Vs.

1.The General Manager/Director,  
Marketing Division,  
Indian Oil Corporation Limited,  
Nungambakkam High Road,  
Chennai - 600 035.

2.The Area Manager,  
Indian Oil Corporation Limited,  
No.2, Race Course Road,  
Chokkikulam,  
Madurai - 625 002.

3.M/s.Sathiyabama Indane Gas Agencies,  
Andipatti,  
Theni District

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings of the second respondent in reference letter Ref:MAO/Andipatty/18, dated 21.05.2018 and Ref.MAO/Andipatti/18, dated 20.11.2018 and quash the same thereby direct the respondents 1 and 2 to resituate the transferred consumers to the rolls of the petitioner firm.

For Petitioner : Mr.P.Sivachandaran

For RR 1 & 2 : Mr.K.Muralidharan

### ORDER

This writ petition is filed seeking a Writ of Certiorarified Mandamus, to quash the order of the second respondent in reference letter Ref:MAO/Andipatty/18, dated 21.05.2018 and Ref.MAO/Andipatti/18, dated 20.11.2018.



2. The case is the petitioner that he is a proprietorship concern doing the business of distributorship in Liquefied Petroleum Gas supplied by the Indian Oil Corporation as per advertisement, dated 08.06.1998. The said selection of distributorship is governed by an agreement, dated 22.06.2001 entered between the petitioner concern and the Indian Oil Corporation Limited, signed by the second respondent herein. The petitioner has been supplying Indane gas cylinders and almost there was 22,000 service connections. While so, the second respondent has passed the impugned order, dated 21.05.2018 unilaterally without affording any opportunity to the petitioner or to the consumers and directed the petitioner to transfer 2500 customers to the newly commissioned M/s.Sathiyama Indane Gas Agencies, Andipatti, the third respondent herein and the second respondent has not taken the said decision with the concurrence of the first respondent and also without notifying any restriction of area of operation as required under Clause referred in 1(b) of the agreement. The petitioner gave a representation, dated 28.05.2018 to the first respondent/Director, Marketing Division that the action of the second respondent in passing an unilateral order relating to the transfer of consumers from the petitioner concern, which had been granted distributorship under the SC/ST category to an inviable unit hurt the Government policy of good service as well has caused a pecuniary loss.

3. It is further stated that once again the second respondent has issued another order in MAO/Andipatti/18, dated 20.11.2018 which was received by the petitioner on 27.11.2018, unilaterally ordered transfer of 5000 domestic customers treating it as second phase of transfer to make the third respondent private agency. The second respondent also directed that if the transfer does not take place within seven days, he would be forced to transfer the customers on the eighth day.

4. It is further stated that the action of the second respondent in singling out the petitioner from several other gas distributing agencies in and around Andipatti and Jakkampatti in Theni District, which are sanctioned and functioning under different quotas, but in which not even a single consumer transfer has been ordered to the newly commissioned/the third respondent herein, is violative of Article 14 of the Constitution of India. Challenging the impugned orders, dated 21.05.2018 and 20.11.2018 passed by the second respondent, the present writ petition has been filed.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents 1 and 2.

6. The learned counsel appearing for the respondents 1 and 2 placed reliance in W.P(MD)No.1963 of 2018 (Thirupathi Gas Service Vs. The Union of India) wherein the Division Bench of this Court has given a decision in similar matter, wherein the impugned circular issued by the second respondent is having the object of benefiting



the consumers by accommodating them from one agency to another agency and it is also taken in the 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 and dismissed the writ petition.

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7. The learned counsel appearing for the respondents 1 and 2 has also relied on the Judgment of the Division Bench of this Court in W.P(MD)No.12607 of 2017 (P.Radhakrishnan Vs. Union of India and others) wherein it is stated that the petroleum companies are empowered to transfer the consumers from one distributorship to another distributorship, in case, within the jurisdiction, there are consumers more than the ceiling and dismissed the writ petition.

8. On going through the agreement signed by both the parties, which is evident in the typeset of papers, in Clause 1(b)(ii) to (iv) of the agreement, it is stated as follows:-

"1.(b)(ii) 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 Clause 1(a) above and such additional distributor or distributors shall be entitled to make sales of Indane in the same territory without, any objection from the Distributor and the Distributor shall not be entitled to claim any over-riding remuneration, commission or allowance for the purpose.

(iii) Without prejudice to the above Corporation shall also be entitled to require the Distributor to effect minimum sales of Indane in accordance with the policy that may be formulated from time to time by the Corporation and shall be further entitled at its sole discretion to reduce, restrict modify or alter the area of the distributorship territory and the decision of the Corporation shall be final and binding on the Distributor. The Corporation shall further be entitled to notify, without any legal obligation to do so, from time to time to the Distributor in writing the minimum number of LPG Filled Cylinders which the Distributor shall be required to uplift in each month. The Corporation shall also be entitled to require the distributor to maintain during the duration of the Agreement such minimum stock as to meet the customers requirements.

(iv) The Distributor will during the continuance of this Agreement confine himself to effect the sales in the area of territory specified herein above but the Corporation shall be entitled without the consent of the Distributor to enlarge, reduce, increase or modify such area or territory to such other place as may from time to time be authorised by the Corporation in writing.



9. The learned counsel appearing for the respondents 1 and 2 produced the circular No.SL/1601, dated 04.01.2018, wherein certain conditions have been given, in which in Clause (2) it is stated that "domestic cylinder sales of old distributors for preceding three months shall be considered to arrive at average monthly refill sales. Refill sales >75% of above market refill ceiling shall be the basis of the number of customers available for transfer to the distributorship selling <50% of (pre USG2016) refill ceiling of that market."

10. On going through the agreement, clause 37(a) refers that "all questions, disputes and differences arising under or in relation to this Agreement shall be referred to the sole arbitration of the Director (Marketing) of the Corporation. If such Director (Marketing) is unable or unwilling to act as the sole arbitrator, the matter shall be referred to the sole arbitration or some other officer of the Corporation by such Director (Marketing) in his place, who is willing to act as such sole arbitrator. It is known to the parties herein that the Arbitrator appointed hereunder is an employee of the Corporation and may be shareholder of the Corporation. The arbitrator to whom the matter is originally referred, whether the Director (Marketing) or Officer, as the case may be, on his being transferred or vacating his office or being unable to act, for any reason, the Director (Marketing) shall designate any other person to act as arbitrator in accordance with the terms of the Agreement and such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also the term of this Agreement that no person other than the Director (Marketing) or the person designated by the Director (Marketing) as aforesaid shall act as arbitrator. The award of the Arbitration so appointed shall be final, conclusive and binding on all the parties to the Agreement and provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof and the Rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause."

11. In view of the above stated facts and circumstances, the petitioner is directed to approach the authorities for appointment of an arbitrator, if they are desired to do so. The learned counsel appearing for the petitioner submitted that the petitioner has already sent two representations for considering the said dispute and if the respondents 1 and 2 have not received the said application, the petitioner is at liberty to give a fresh representation within a period of two weeks from the date of receipt of a copy of this order and the concerned authorities are directed to consider the case and appoint an Arbitrator as per the Act and agreement and pass final orders thereon.



12. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Sd/

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The General Manager/Director,  
Marketing Division,  
Indian Oil Corporation Limited,  
Nungambakkam High Road,  
Chennai - 600 035.
2. The Area Manager,  
Indian Oil Corporation Limited,  
No.2, Race Course Road,  
Chokkikulam,  
Madurai - 625 002.

+1 cc to Mr.P.Sivachandran,Advocate,SR.No.99536

ps

SS/RSK/SAR 3/20.12.2018/5P/4C

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