THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION Nos.20454 AND 30591 OF 2014

COMMON ORDER:

In both the writ petitions, since the issue involved between the same parties, they are heard together and being disposed of by this common order.

2. The petitioner was granted MS/HSD (Motor Spirit Petrol and High Speed Diesel) dealership for a period of 15 years with effect from 01.12.2005 under ST category from Bharat Petroleum Corporation Limited (BPCL). Thereafter, the petitioner entered into an agreement called 'Dispensing Pump and Selling License' dated 01.12.2005 with the respondents Corporation and has been running a petrol pump in the name of M/s.Sri Sai Balaji Fuel Station at Sy.No.93 of Kothapallimitta Village, S.R.Puram Mandal, Chittoor District. While so, the officials of the respondent Corporation inspected the petrol pump of the petitioner on 10.10.2013 and found certain irregularities. Thereafter, the second respondent issued a show cause notice dated 09.11.2013 to the petitioner to show cause as to why his dealership should not be cancelled for non-performance of his obligations under the dealership agreement. Under the show cause notice, the second respondent advised the petitioner to stop the sales with immediate effect. The petitioner submitted his

explanation dated 20.11.2013 to the second respondent denying the allegations in the show cause notice. Challenging the show cause notice dated 09.11.2013, the petitioner filed W.P.No.20454 of 2014, however, no interim order was granted and the business continued to be closed.

3. Thereafter, the Chief Manager Sales (Retail), South at Chennai, by his letter dated 14.02.2014, instructed the petitioner to appear before him for personal hearing on 26.02.2014, to which, the petitioner appeared before him and requested to drop further action in the matter. Subsequently, though the petitioner submitted a representation dated 02.06.2014 to supply the fuel by enclosing a demand draft for Rs.1,10,000/-, the second respondent did not respond to the same. Thereafter, the second respondent issued order dated 20.09.2014, terminating the dealership of the petitioner. Challenging the same, the petitioner filed W.P.No.30591 of 2014.

4. The respondents filed counter-affidavit stating that there are guidelines called 'Marketing Discipline Guidelines, 2012' (for short, MDG, 2012), as per which, there are three categories of irregularities i.e., minor, major and critical. In the inspection dated 10.10.2013, the officials of the Corporation found critical irregularities, which are highest

level of irregularities. The petitioner did not avail his right of appeal as against the termination order dated 20.09.2014.

5. Sri V.Jagapathi, learned counsel for the petitioner, submitted that the irregularities found by the inspection team come under the category of 'minor'. He further submitted that the petitioner is running the petrol bunk by his employee and he does not know the irregularities done by his employee as he was attending his ill-health mother; that he was not present in the business premises and that therefore, the petitioner is not liable for the alleged irregularities. He further submitted that as per clause 8.8 of the of the MDG, the termination of SC/ST category dealerships should be approved by the first respondent and that in the impugned notice, dated 20.092.014, there is no mention that the second respondent obtained the approval from the first respondent and sought to set aside the impugned order.

6. Sri B.Mayur Reddy, learned Standing Counsel for the respondents, submitted that the irregularities found by the inspecting officials, i.e., manipulation of Multi Product Dispenser bearing No.11BB1620V, variation in stock of HSD beyond permissible limit and variation of sale of MS beyond permissible limit, are critical in nature. He further submitted that as the petitioner belongs to ST category, the second

respondent obtained approval from the first respondent as per 8.8 of the MDG before issuance of impugned notice. He further submitted that as the petitioner violated the terms of Dispensing Pump and Selling License dated 01.12.2005 by tampering with the working parts of dispensing unit, the respondents terminated the dealership of the petitioner. He further submitted that the respondents, being the principal, can solely decide the issue of restoration of the dealership of the petitioner and this Court cannot interfere in the administrative decision of BPCL and sought to dismiss the writ petition. In this regard, he relied on a judgment of the Apex Court in **Indian Oil Corporation Ltd. Vs. T.Natarajan[1].**

7. It is to be noted that in pursuance of issuance of impugned final order of termination dated 20.09.2014, the cause in W.P.No.20454 of 2014, which was filed challenging the show cause notice of the second respondent, does not survive for adjudication and hence the same is dismissed as infructuous.

8. Coming to the merits in W.P.No.30591/2014, the irregularities pointed out by the respondents i.e., interference in Product Dispenser, affixing unauthorized fittings and manipulating/altering/changing the EMT Card, D-2 rate, pulsar card of the MPDs and variation in stock of HSD and

[1] 2018 SCC OnLine SC 698

MS at 20% as against the permissible limit of 4% and tampering with the working parts of the dispensing unit are critical in nature. The petitioner has not made out a case to deviate from holding that the irregularities said to have been committed by him do not fall under critical category and fall under the category of minor or major. The opportunity of personal hearing was provided to the petitioner and the petitioner attended before the second respondent and made his oral submissions. His oral submissions were recorded, on which, he duly signed on 26.02.2014.

9. Insofar as the contention of the learned counsel for the petitioner that the second respondent did not obtain approval from the first respondent as per 8.8 of the MDG before issuance of impugned notice is concerned, the learned Standing Counsel for the respondents, along with the counter-affidavit, filed a letter dated 23.05.2014, which was signed on 18.06.2014 by the ED (Retail), wherein approval for termination of the dealership of the petitioner was granted by the Director (Marketing), the first respondent herein, on 30.06.2014. Though obtaining the approval from the first respondent has not been specifically indicated by the second respondent in the impugned order, the same cannot be doubted, in the light of the copy of the same is filed by the learned Standing Counsel for the respondents. The petitioner

has not filed any specific reply affidavit attributing malafides to the said approval. Hence, the contention of the learned counsel for the petitioner in this regard is negatived.

10. Insofar as the contention of the respondents that the petitioner did not avail the alternative remedy of appeal against the impugned order is concerned, since the issues involved between the petitioner and respondents are purely technical in nature, the petitioner ought to have availed the alternative remedy of appeal proceedings under clause 8.9 of the MDG, 2012. Moreover, he did not mention cogent reasons in para 11 of the writ affidavit for unavailing the efficacious remedy of appeal and filing this writ petition under Article 226 of the Constitution of India. Hence, W.P.No.30591 of 2014 fails and the same is liable to be dismissed.

11. In the result, W.P.No.20454 of 2014 is dismissed as infructuous and W.P.No.30591 of 2014 is dismissed. No costs. Miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

T.AMARNATH GOUD, J

Date: 17-12-2018
TJMR