

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

Writ Appeal No.680 of 2018

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in I.A. No.1 of 2018 in W.P. No. 12362 of 2018 dated 23.4.2018.

The 1st respondent herein filed the Writ Petition seeking a mandamus to declare the action of the appellant-Corporation in banning/blocking and blacklisting the 1st respondent firm from supplying ARB material, and to further declare the action of the appellants in advising all its agencies not to purchase the products of the 1st respondent without affording him an opportunity to render his explanation, as arbitrary and illegal. By way of interim relief, the 1st respondent herein sought a direction to the appellants to revoke the suspension/blacklisting of their firm by granting them access to transact/upload/list their products to cater to the needs of various customers of the Hindustan Petroleum Corporation Ltd, (HPCL).

In the order under appeal, the learned Single Judge observed that, as blacklisting or removal of the name of the respondent-writ petitioner, from the portal of the HPCL, was done without adhering to principles of natural justice, there shall be an interim direction as prayed for. The learned Single Judge observed that the 1st respondent-writ petitioner shall supply HPCL approved products by placing the order in the name of the approved products in the portal.

While Sri B. Mayur Reddy, learned Standing Counsel for the HPCL, would submit that the 1st respondent-writ petitioner is merely a stockist of one of the manufacturers with whom HPCL has an agreement; there is no agreement between HPCL and the 1st respondent-writ petitioner; as a

matter of concession to the manufacturers, the names of their sub-agents are also reflected in the web portal of HPCL, to enable its distributors to procure goods from such sub-agents; as it was found that the 1st respondent-writ petitioner was supplying spurious goods, their name was removed from the portal of HPCL; and, since there is no privity of contract between HPCL and the 1st respondent-writ petitioner, HPCL is not obligated to put the 1st respondent-writ petitioner on notice, or to give them an opportunity of being heard, before suspending procurement of supplies from them; though HPCL is not obligated to do so, the enquiry which is being caused shall be completed within three weeks from today after putting the 1st respondent-writ petitioner on notice and giving them an opportunity of being heard; and, in the meanwhile, the order of the learned Single Judge may be suspended to ensure that spurious products are not supplied by the 1st respondent-writ petitioner.

On the other hand Sri A. Venkatesh, learned counsel for the 1st respondent-writ petitioner, would draw our attention to the letter addressed by the Chief Regional Manager, LPG, HPCL to all HP Gas Distributors on 9.6.2012 informing them that “Hot Marc Stoves” manufactured by M/s. Paras Appliances was introduced for marketing by HPCL; and Sri B.S.M. Rao/R.C.Rao, of M/s. Spectrum Enterprises, Hyderabad, distributors for the above brands (the respondent-writ petitioner) were authorized to contact them for promotion of the same.

Learned counsel would also draw our attention to the impugned E-mail dated 1.2.2018, wherein the 1st respondent-writ petitioner is referred to as the sub-vendor, to submit that it is on the basis of the permission accorded by HPCL that the 1st respondent-writ petitioner was supplying products for the past six years; and even without putting them on notice, and without giving them an opportunity of being heard, the impugned order came to be passed removing their name from the website. Reliance

is placed by the Learned Counsel on the judgment of the Supreme Court in **Erusian Equipment & Chemicals Ltd., vs. State of West Bengal**¹.

The power to place its dealers or sub-vendors under suspension may well inhere with the HPCL, and to hold otherwise would mean that, even in grave and extreme circumstances, HPCL would be required to put their distributors or their vendors or the sub-vendors on notice even before placing them under suspension. The fact, however, remains that the appellant has not placed the respondent-writ petitioner under suspension, and has, instead, remained their name from the portal, in effect terminating their services as their sub-vendors.

This Court would exercise jurisdiction, under Clause 15 of the Letters Patent, only if the order under appeal suffers from a patent illegality. It is on the basis of a letter, issued by the Chief Regional Manager, LPG, HPCL, on 9.6.2012, that all the distributors of HPCL were informed that the 1st respondent-writ petitioner could effect supplies of the products mentioned in the said letter. Having permitted the 1st respondent-writ petitioner to effect supplies for nearly six years, it is difficult to agree with the submission of Sri B. Mayur Reddy, learned Standing Counsel for the appellants, that, since there is no written agreement between HPCL and the 1st respondent-writ petitioner, and they are free to remove their name from the website as and when they choose. We refrain from saying anything more, since the Writ Petition is still pending adjudication before the learned Single Judge.

Suffice it, therefore, to modify the order under appeal to the limited extent that the HPCL may, after putting the 1st respondent-writ petitioner on notice and after giving them an opportunity of being heard, pass final orders in accordance with law. Since Sri B. Mayur Reddy, learned Standing Counsel for the appellants, would submit that a show cause notice will be issued within one week from today, the 1st respondent-writ

¹ [1975] 1 SCC 70

petitioner is directed to submit their reply thereto within one week thereafter. Till final orders are passed by HPCL, the aforesaid interim order shall continue to remain in force. In case, the 1st respondent-writ petitioner does not submit their explanation to the show cause notice within the time stipulated hereinabove, it is open to HPCL to proceed and pass final orders in accordance with law without awaiting the 1st respondent-writ petitioner's reply, to the show cause notice, thereafter. It is also open to HPCL, in the meanwhile, to take all reasonable steps to ensure that no unauthorized products are supplied by the 1st respondent-writ petitioner to HPCL distributors.

It is made clear that, since this appeal is preferred against the interlocutory order, the views expressed in this order merely reflect our *prima facie* view, and the learned Single Judge, when the Writ Petition is finally heard, shall examine the rival contentions, urged before him, on its merits, uninfluenced by the observations in this order.

The Writ Appeal is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

27th April, 2018

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Date:27.04.2018

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