HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.17628 OF 2007

ORDER:

1. This writ petition is filed seeking to issue a writ of mandamus declaring the action of the 1st respondent-Corporation in terminating the LPG dealership of the petitioners in terms of the order in Ref.No.JV/LPG, dated 17.8.2007, as illegal and arbitrary, and consequently, to direct respondents Nos.1 and 2 to enable the petitioners to carry on business of LPG dealership in terms of the dealership agreement dated 18.10.2005.

2. Heard Sri Vedula Venkata Ramana, learned Senior Counsel on behalf of M/s Bharadwaj Associates appearing for the petitioners and Sri M. Ravindranath Reddy, learned Counsel for respondents No.1 and 2 and Sri N. Siva Reddy, learned Counsel for the 3rd respondent.

3. The case of the petitioners in brief is as follows:

(i) The 1st respondent-Corporation granted distributorship of LPG cylinders in the name of M/s. Swamy Raghavendra Gas Agency, Ongole rep., by its proprietrix J. Vasavi-3rd petitioner, in the year 1997 and since then, the distributorship was carried on as a sole proprietary concern. The 2nd petitioner being the father of the 3rd petitioner has been looking after the business activities of the 3rd petitioner. By the time of grant of dealership, the 3rd petitioner was unemployee.

(ii) While so, on 5.9.2005, petitioners Nos.2 and 3 constituted a partnership firm in the name and style of the 1st petitioner. The 3rd petitioner applied to the 1st respondent-Corporation to enable the said partnership firm to become the distributor as against the initial sole proprietary concern. The 1st respondent-Corporation acceded to the said request while entering into a dealership agreement dated 18.10.2005 with the said partnership firm and the said dealership agreement is valid for a period of five years i.e., upto 18.10.2010.

(iii) While so, the 1st respondent-Corporation issued a show cause notice dated 19.3.2007 proposing to terminate the dealership agreement dated 18.10.2005 for violation of clauses 24(a), 24(c )(ii), 28(B)(a), 28(B)(l) and 28(B)(n) of the agreement. Petitioners Nos.2 and 3 submitted a joint explanation dated 9.4.2007 explaining the circumstances under which the 3rd petitioner secured employment, and stating that petitioner No.3 would rectify the deficiency within four days as permitted by clause No.28(B) (a) of the dealership agreement.

(iv) Petitioners Nos.2 and 3 belong to Scheduled Tribe category and the circumstances made the 3rd petitioner to accept the Government employment in the year 2000. She submitted resignation letters on 25.8.2005 and again on 23.3.2007 to the Commercial Tax Department. But her resignation was not accepted. She stated all the circumstances in her explanation to that effect. But without considering the same, the 1st respondent passed the order of termination dated 17.8.2007. Aggrieved by the same, the present writ petition is filed.

4. The 1st respondent filed a counter-affidavit stating that the subject matter of this writ petition is governed by an arbitration under the agreement between the parties vide clause 38 of the Dealership Agreements dated 22.1.1997 and 18.10.2005 and therefore, the writ petition is not maintainable in view of Section 8 of the Arbitration and Conciliation Act 1996. It is stated that the 3rd petitioner during the subsistence of the first agreement dated 22.1.1997, secured the employment and again, she entered into the second agreement dated 18.10.2005 by suppressing her

employment in the Government service in her affidavit. It is stated that the employment during the subsistence of dealership agreement either as sole proprietor or partner of partnership firm is contrary to the conditions of the agreement and that when a show cause notice was issued, the petitioners submitted explanation admitting about the employment of the 3rd petitioner and stating about the resignation letters submitted by the 3rd petitioner and that the 3rd petitioner has not only violated the contractual terms, but also played fraud by giving false affidavit and therefore, there is no illegality in termination of the dealership of the petitioners.

5. The 3rd respondent filed a counter-affidavit stating that subsequent to the termination of dealership of the petitioners, the 1st respondent Corporation issued advertisement for distributorship and he participated in the interview and that the results were not published on account of interim order passed by this Court on 29.1.2008. It is stated that he filed WVMP No.4015 of 2011 seeking to vacate the interim order dated 29.1.2008 and this Court on 27.2.2012 vacated the interim order dated 29.1.2008 while holding that any such appointment will be subject to the final orders to be passed in this writ petition.

6. The learned Senior Counsel appearing on behalf of the petitioners submitted that initially the 3rd petitioner got individual dealership and subsequently, on her request, the dealership had been converted from proprietary concern to the partnership firm-1st petitioner, in which her father is also a partner, and that once the corporation accepted the dealership of the 1st petitioner-partnership firm, it is to be inferred that all the deficiencies of erstwhile sole proprietary concern were ratified and that there is no justification in pointing out the events anterior to 18.10.2005 and that insofar as the partnership firm is concerned, there are no

allegations. He further submitted that the 3rd petitioner submitted her resignation, and therefore, she cannot be found fault. He further submitted that even if all the allegations are assumed to be true, the action taken by the corporation in terminating the dealership of partnership firm, in which the father of the 3rd petitioner is also a partner, is unsustainable and opposed to the settled principles of judicial review, and therefore, the impugned order is liable to be set aside.

7. The learned Counsel appearing for respondents Nos.1 and 2 submitted that while the dealership agreement of proprietary concern dated 22.1.1997 was in existence, the 3rd petitioner got employment, and she did not inform the same to the 1st respondent-Corporation, and at the time of conversion of dealership from proprietary concern to the partnership firm, the 3rd petitioner gave notarized affidavit suppressing the fact of her employment and stating that she was not employed anywhere in India either in private sector or the Government sector. He further submitted that 3rd petitioner undertook at the time of agreement that she would not take up any other employment and in the event of her failure to keep up such promise, the Corporation is empowered to suspend or terminate the dealership. He further submitted that after issuance of show cause notice only, the 3rd petitioner informed about her employment and resignation and that there are no bonafides on the part of the petitioners, and therefore, there is no illegality in terminating the dealership of the petitioners. He further submitted that the tenure of dealership has already been over and that there are no merits in this writ petition.

8. I have considered the rival submissions made by the parties and perused the records. One of the contentions raised by the learned Counsel for the petitioners is that the earlier dealership was granted in favour of

M/s. Swamy Raghavendra Gas Agency-sole proprietrix concern in the year 1997 and subsequently, the same was allowed to have been converted into a partnership concern with the induction of the father of the earlier proprietrix-3rd petitioner and that the 3rd petitioner as one of the partners of the partnership firm entered into a new agreement on 18.10.2005 and before entering into the new agreement dated 18.10.2005, the Corporation had asked the petitioners to give notarized affidavits, and in the notarized affidavits, petitioners Nos.2 and 3 had suppressed the fact of employment of the 3rd petitioner.

9. Perusal of the termination orders dated 17.8.2007 would discloses that petitioners Nos.2 and 3 have given notarized affidavits on 3.9.2005 wherein they have stated that they are not employed anywhere in India either in private sector or in Government service. It is the contention of the petitioners that the 3rd petitioner has tendered her resignation to the post of Commercial Tax Officer and the same was not accepted by the Department and therefore, she cannot be found fault. The failure to disclose about her employment in the affidavit amounts to suppression of facts. By suppressing the fact that the 3rd petitioner was gainfully employed in the Commercial Tax Department as Commercial Tax Officer, petitioners Nos.2 and 3 have violated the terms of the allotment of dealership in their favour. Therefore, I have no hesitation to hold that the respondents have rightly terminated the dealership of the petitioners. There are no merits in this writ petition.

10. Accordingly, the Writ Petition is dismissed as devoid of merits. No costs. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 23rd April, 2018.
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HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.17628 OF 2007

23/04/2018

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