

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.23431 of 2018
and W.M.P.Nos.27347 to 27349 of 2018

M/s.Captain Palanisamy Service Station
No.323, Omalur Main Road,
Salem-636 007, a firm rep.
By its Managing Partner
Mr.S.Kuppannan

... Petitioner

Vs.

1. Indian Oil Corporation Limited
rep. by its Executive Director,
Marketing Division, Southern Region,
Tamil Nadu State Office,
Indian Oil Bhavan,
No.139, Nungambakkam High Road,
Chennai-600 034.
2. Indian Oil Corporation Limited
rep. by its Deputy General Manager,
Marketing Division, Salem Divisional Office,
No.234, First Floor, NH-7,
Salem-Bangalore Bypass Road,
Kondalampatti, Salem-636 010.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the entire records pertaining to the issuance of dealership termination order dated 03.09.2018 in SLM/SLM1/Captain passed by the first respondent herein and quash the same.

For Petitioner : Mr.B.Kumar, Senior Counsel
for Mr.C.Jagadish

For Respondents: Mr.Abdul Saleem
Standing Counsel

O R D E R

Seeking to quash the termination order passed by the first respondent dated 03.09.2018, this writ petition is instituted.

2. The case of the petitioner is as follows :

(i) The petitioner claims that it derived its name from one Mr.Palanisamy, who served in the Indian Army and died in the war-field in the Indo-Bangladesh War, 1972. The petroleum outlet was allotted to his father in honour of the said soldier. It was a partnership firm and there were additions and changes in the composition of the partnership, which were duly approved by the respondents. The approved partnership consists of Mr.K.Palanisamy, Mr.S.Kuppanan, Mrs.G.Amaravathi and Mr.K.P.Manoharan.

(ii) While so, on 09.10.2017, the second respondent issued a show cause notice (in short, "SCN") to the petitioner seeking explanation as to why action should not be taken against it for breach of the terms and conditions of the Dealership agreement and if no reply is submitted, suitable action will be taken including the termination of the Dealership Agreement. The basis of the said SCN is the letter dated 10.07.2017 sent by one of the partners, one Mr.K.P.Manoharan.

(iii) Mr.K.P.Manoharan along with the said letter filed a sworn affidavit to the effect that Mr.K.Palanisamy borrowed money from him for running the business and executed agreements, General Power of Attorney and registered sale deed with respect to the petrol bunk in violation of the terms and conditions of the Dealership Agreement.

(iv) A reply dated 06.11.2017 was given by the other two partners, namely, Mr.S.Kuppanan and Mrs.G.Amaravathi. In fact, Mr.Palanisamy has given a complaint to the Commissioner of Police alleging fabrication of documents against Mr.Manoharan.

(v) The petitioner laid challenge to the SCN dated 09.10.2017 before this Court in W.P.No.29317 of 2017, which was disposed of on 16.11.2017 directing the respondents to give an opportunity of personal hearing to the petitioner and its partners.

(vi) Pursuant to the said direction, the first respondent served a notice dated 01.03.2018 on all the partners of the petitioner firm and held hearing on 19.03.2018, wherein, excepting Mr.Manoharan, the other partners appeared and filed written submissions.

(vii) In the meanwhile, the petitioner felt that the respondents ought to have invoked the arbitration clause contained in the agreement and by failing to do so, they breached the terms of the agreement. Hence, they preferred O.A.Nos.360 and 361 of 2018 under Section 9 of the Arbitration and Conciliation Act, 1996 before this Court seeking orders of

injunction and stay of the enquiry proceedings. The petitioner also sought the respondents to refer the matter to arbitration.

(viii) This Court dismissed the said applications on 24.07.2018 on the premise that the act of the petitioner would amount to waiver of their right of arbitration.

(ix) In the said backdrop, it is stated by the petitioner that the first respondent passed the impugned order on 03.09.2018, without even considering their reply. Hence, they are before this Court.

3. Refuting the allegations of the petitioner and seeking to sustain the impugned order, the respondents filed a counter affidavit. It is stated in the counter that one of the partners Mr.K.P.Manoharan informed them that he lent money to another partner Mr.Palanisamy in the year 2003 for his personal needs. Consequently, Mr.Palanisamy executed a Power of Attorney on 05.05.2003, which was registered as document No.111 of 2003 appointing Mrs.M.Prabha, W/o.K.P.Manoharan, as his attorney to carry out the day-to-day business. The Power of Attorney holder Mrs.Prabha executed a sale deed in favour of one Mr.A.Selvam conveying 26% of shares of Mr.Palanisamy under the registered document No.31 of 2013. It is the claim of the respondents that the said violations of the terms and conditions committed by the petitioner alone invited the impugned order, which was passed by following due process of law. It is submitted that the continuance of the service by the petitioner would cause inconvenience to the public at large. It is also claimed that since the petitioner failed to handover the site on 04.09.2018, the officials of the respondents in the presence of the revenue officials took possession of the retail outlet and an adhoc agent was appointed to ensure the uninterrupted supply to the customers.

4. Heard both sides.

5. Admittedly, there seems to be a dispute between one partner on the one hand and the remaining partners on the other hand, as one of the partners, K.P.Manoharan alleged that he lent money to another partner Palanisamy in the year 2003 for his personal needs, who in turn, executed a Power of Attorney on 05.05.2003, which was registered as document No.111 of 2003 appointing Mrs.M.Prabha, W/o.K.P.Manoharan, as his attorney to look after the day-to-day affairs. The Power of Attorney holder, armed with the Power of Attorney, executed a sale deed favouring one Mr.A.Selvam and thereby conveyed 26% of shares out of 28% of shares held by him, which was registered as document No.31 of 2013.

6. Alleging that the said action of one of the partners is violative of the Agreement conditions, the show cause notice

dated 09.10.2017 was issued. As per the directions of this Court in W.P.No.29317 of 2017, dated 16.11.2017, opportunity of hearing was afforded to the petitioner. Though explanations were given by the partners, excepting Mr.K.P.Manoharan, that the said transactions are personal and they have nothing to do with the partnership, the respondents did not accept the same and thereby, the impugned order came to be passed. It is pertinent to state that the complainant partner did not participate in the enquiry before the respondents.

7. A perusal of the impugned termination order would go to show that it was passed on the ground that the reconstitution of the partnership firm amounts to violating the terms and conditions of the Agreement.

8. Though it is claimed by the petitioner that the private transactions between the partners have nothing to do with the partnership and one partner gave complaint against the other alleging fabrication of documents, the same cannot be decided by this Court by conducting a roving enquiry while exercising the jurisdiction under Article 226 of the Constitution. It is always open to the parties to prove their case before the competent court in accordance with law, and based on the outcome of the proceedings, they can approach the respondents for appropriate remedy.

9. At this stage, learned Senior Counsel for the petitioner sought a direction to the respondents to refer the matter to the arbitration. In support of the said contention, he relied on the order of this Court dated 24.07.2018 made in O.A.Nos.360 and 361 of 2018. It is apt to extract the following portion from the order dated 24.07.2018 :

"7. In the event of the authorities of respondent passing any orders after enquiry, there may arise a dispute for reference to arbitration. As on date, there is nothing on record to show that there is a dispute to be adjudicated by an Arbitral Tribunal."

10. In view of the aforesaid order, it is open to the parties to initiate appropriate arbitration proceedings, if they are so advised. While doing so, Section 12(5) of the Arbitration and Conciliation (Amendment) Act, 2015 shall be borne in mind by the parties.

11. With the above direction, this writ petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Executive Director,
Indian Oil Corporation Limited,
Marketing Division, Southern Region,
Tamil Nadu State Office, Indian Oil Bhavan,
No.139, Nungambakkam High Road,
Chennai-600 034.
2. The Deputy General Manager,
Indian Oil Corporation Limited,
Marketing Division, Salem Divisional Office,
No.234, First Floor, NH-7,
Salem-Bangalore Bypass Road,
Kondalampatti, Salem-636 010.

+1cc to Mr.Abdul Saleem, Advocate Sr.15956

+1cc to Mr.M.K.Subramanian, Advocate Sr.15045

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W.P.No.23431 of 2018

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srg 15/03/2019

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