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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2019

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THE HON'BLE MR. JUSTICE P.D.AUDIKESSAVALU

W.P. No. 21472 of 2019
and
W.M.P. No. 20673 of 2019

M/s.Kalvarayan Farmers Producers Company Limited,
Represented by its Chairman T. Senthil Kumar
No.2/495, Velu Nagar, Second Street,
Seelanaickenpatty (p.o),
Salem.

... Petitioner

Vs.

The General Manager,
M/s. Hindustan Petroleum Corporation Limited,
No. 6A, Gandhi Irwin Road,
Ansari Estate,
Egmore, Chennai - 600 008.

... Respondent

Prayer : Writ Petition filed under Article 226 of the
Constitution of India, praying to issue a Writ of Mandamus,
directing the Respondent to consider the Petitioner's
Representation dated 12.11.2018.

For Petitioner : Mr. Thamizhendhi

For Respondent : Mr. M. Vijayan for
M/s. King and Partridge

O R D E R

Heard Mr. Thamizhendhi, Learned Counsel for the
Petitioner and Mr. M. Vijayan, Learned Counsel who has taken
notice for the Respondent and perused the materials placed on
record, apart from the pleadings of the parties.

2. The Respondent had entered into a Dealership Agreement
dated 30.01.2018 with one Mr. K. Kulanthaivel, Proprietor,
M/s. Kurinji Agency, in respect of its outlet at No.908/2,
Perundurai Road, Gandhi Nagar, Kanjikovil, Perundurai Taluk,
Erode District. As the said Mr. K. Kulanthaivel could not
efficiently run that business and clear the dues, he had
surrendered the dealership, which was consequently terminated.



3. The Petitioner made a representation dated 12.11.2018 to the Respondent seeking to transfer the dealership in its favour along with a recommendation from the Managing Director, Tamil Nadu Small Farmers Agri Business Consortium, Guindy, Chennai. As there had not been any response to the same, the Petitioner has filed this Writ Petition for a direction to the Respondent to consider that representation.

4. Learned Counsel appearing for the Respondent, on instructions, states that after taking over the dealership from the said Mr. K. Kulanthaivel, the dealership has been handed over to M/s. Karthik Fuel Agencies, as ad hoc dealer, from 18.07.2019 onwards. It is further contended that the dealership falls under SC category and as such, no re-constitution or transfer of the same to any person other than one under SC category is permissible under the applicable guidelines with the only exception that there may be induction of a financial partner from outside the SC category with maximum share of 25% in the dealership and the remaining minimum of 75% has to be held by a person belonging to SC category. In such circumstances, it is pointed out that it would not be possible to consider the claim of the Petitioner, which is a Company, and does not belong to SC category, for whom the dealership is exclusively reserved. A memo to that effect has been filed, which is placed on record.

5. In this context, it would be useful to refer to the dictum laid down by the Hon'ble Supreme Court of India in Director of Settlements, A.P. -vs- M.R. Apparao [(2002) 4 SCC 638], in which it has been held as follows:-

"17.One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty



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imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (Kalyan Singhv. State of U.P. [AIR 1962 SC 1183]). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law...."

Applying the aforesaid principles to the facts of the present case viz-a-viz the cogent reasons explained by the Respondent in refusing to accede to the claim made by the Petitioner in its representation dated 12.11.2018, this Court does not find any justification to entertain this Writ Petition for the relief that has been sought. However, it is hastened to add here that the Respondent shall expeditiously take measures to award the dealership on regular basis to the eligible person in the prescribed manner without brooking any further delay.

6. In the result, the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//
Sub Assistant Registrar

vji
To

The General Manager,
M/s.Hindustan Petroleum Corporation Limited,
No.6A, Gandhi Irwin Road,
Ansari Estate,
Egmore, Chennai - 600 008.

+2cc to Mr. Thamizhendhi, Advocate, SR.62961/19
+1cc to M/s. King and Partridge, Advocate SR.62620/19

W.P. No. 21472 of 2019

VGI (CO)
CB(09/12/2019)