

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2019

CORAM

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

W.P. No.28580 of 2019

and

W.M.P. No. 28323 of 2019

Kamathugan

... Petitioner

Vs.

1. Union of India,
Represented by Secretary to Government,
Ministry of Petroleum and Natural Gas,
New Delhi.
2. The Executive Officer,
Indian Oil Corporation Limited,
Tamil Nadu State Office,
Indian Oil Bhavan,
No.149, Nungambakkam High Road,
Chennai - 600 034.
3. The General Manager, (LPG Sales),
Indian Oil Corporation Limited,
Tamil Nadu State Office,
Indian Oil Bhavan,
No.149, Nungambakkam High Road,
Chennai - 600 034.
4. The Chief Area Manager,
Indane Area Office, Indian Oil Corporation Limited,
"Triveni" 2nd Floor, B-35, Shastri Road,
Thillai Nagar, Trichy - 620 018.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the proceedings of the fourth respondent in Reference No.TRAO/Mahandha dated 15/16.08.2019 and quash the same.

For Petitioner : Mr. M. Kalyanasundaram
Senior Counsel
for Mr. P. Kannan

For R1 : Mr. J. Madhanagopal Rao
Central Government Standing Counsel

For R2 to R4 : Mr. Mohamed Fayaz Ali

O R D E R

Mr. J. Madanagopal Rao, Learned Central Government Standing Counsel takes notice for the First Respondent and Mr. Mohammed Fayaz Ali, Learned Standing Counsel takes notice for the Second to Fourth Respondents.

2. It is contended by the Learned Counsel appearing for the Respondents that the Petitioner has got an effective alternative remedy by way of an appeal under Clause 3.11 of Marketing Discipline Guidelines 2018, which has been produced and reads as follows:-

"3.11 Appellate proceedings:

1. In all cases of critical and major irregularities where orders are issued for taking action under MDG, the Distributor will have the right to appeal within a period of 30 days from the date of receipt of order to the appropriate authority who will be empowered to decide the matter. The appellate authority shall dispose off the appeal within 60 days from the date of filing of the appeal.
2. The appeal in case of regular LPG distributorship would be allowed only after the amount equivalent to 25% of fine/quantum of irregularity as levied or Rs.10 lacs, whichever is lower, has been deposited by the Distributor with the OMC. Appeal in case of Durgam Kshetriya Vitarak (DKV) shall be allowed only after 10% of fine quantum of irregularity as levied or Rs. 1 lac, whichever is lower has been deposited by the distributor with the OMC.
In case the verdict on the appeal goes in favour of the distributor, the OMC shall refund the amount as applicable without interest after the disposal of the appeal.

However, in case the appeal is rejected, the distributor will have to deposit the balance amount of fine /quantum of irregularity as levied to the concerned OMC within 30 days from the date of disposal of the appeal.

The above guidelines will also be applicable to all appeal cases under RMDG 2014 pending disposal.

3. In the case of termination of the LPG distributor other than SC/ST category, the appellate authority will be the ED (LPG) in the Head Office of the respective OMCs. In the case of termination of SC/ST category distributorship, the appellate authority will be Director (HR) of the OMC.
4. For all the appeals in case of critical and major irregularities not leading to termination, the appellate authority will be LPG Head of the State /Region/Zone of IOC, BPC & HPC respectively for both SC/ST and Non SC/ST category distributorships.
5. Prima Facie, if the appellate authority observes merit in the appeal, the said authority will have the power to stay further action under MDG only in the case of Termination till the appeal is finally disposed of."

According to the Learned Counsel appearing for the Respondents, since the Petitioner did not prefer any such appeal within the stipulated period of 30 days against the impugned order, before the Appellate Authority, the Respondents proceeded to implement the same by deducting a sum of Rs. 4,12,734/- from the account of the Petitioner and it is only thereafter, the Petitioner has filed the present Writ Petition challenging the same.

3. Learned Senior Counsel for the Petitioner, on instructions, submits that the Petitioner is willing to pursue the alternative remedy, but the Respondents after retaining 25% of the amount deducted, should refund the remaining 75% of that amount to the account of the Petitioner in terms of the aforesaid provisions. He seeks permission of this Court to withdraw the Writ Petition with liberty to resort to that alternative remedy.

4. Having regard to the aforesaid rival contentions of the parties, as neither of them have produced any material

to show the date on which the impugned order was actually delivered by the Respondents to the Petitioner, and the entire amount claimed by the Respondents has already been deducted by the Respondents from the account of the Petitioner, it would be appropriate that the Appellate Authority shall entertain such appeal preferred by the Petitioner without reference to the question of limitation, if it is presented by 15.10.2019.

5. If such appeal is filed by the Petitioner within the aforesaid stipulated time limit, after retaining requisite 25% of the amount, the remaining 75% of the amount shall be invested by the Respondents in an interest fetching Fixed Deposit in any nationalized Bank in the name of the Registrar General of this Court and the original copy of the Fixed Deposit receipt shall be handed over to the Registrar General of this Court under written acknowledgment for safe custody by 31.10.2019 and depending upon the outcome of such appeal, it is open to the concerned authority to pass further orders for dealing with the amount in Fixed Deposit in accordance with law.

6. The Writ Petition is dismissed as withdrawn granting liberty to the Petitioner to resort to the alternative remedy in the manner mentioned supra. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

maya/gsa

To

1. The Secretary,
Government of India,
Ministry of Petroleum and Natural Gas,
New Delhi.
2. The Executive Officer,
Indian Oil Corporation Limited,
Tamil Nadu State Office,
Indian Oil Bhavan,
No.149, Nungambakkam High Road,
Chennai - 600 034.

3. The General Manager, (LPG Sales),
Indian Oil Corporation Limited,
Tamil Nadu State Office,
Indian Oil Bhavan,
No.149, Nungambakkam High Road,
Chennai - 600 034.
4. The Chief Area Manager,
Indane Area Office, Indian Oil Corporation Limited,
"Triveni" 2nd Floor, B-35, Shastri Road,
Thillai Nagar, Trichy - 620 018.

copy to:

The Registrar General
High Court, Madras.

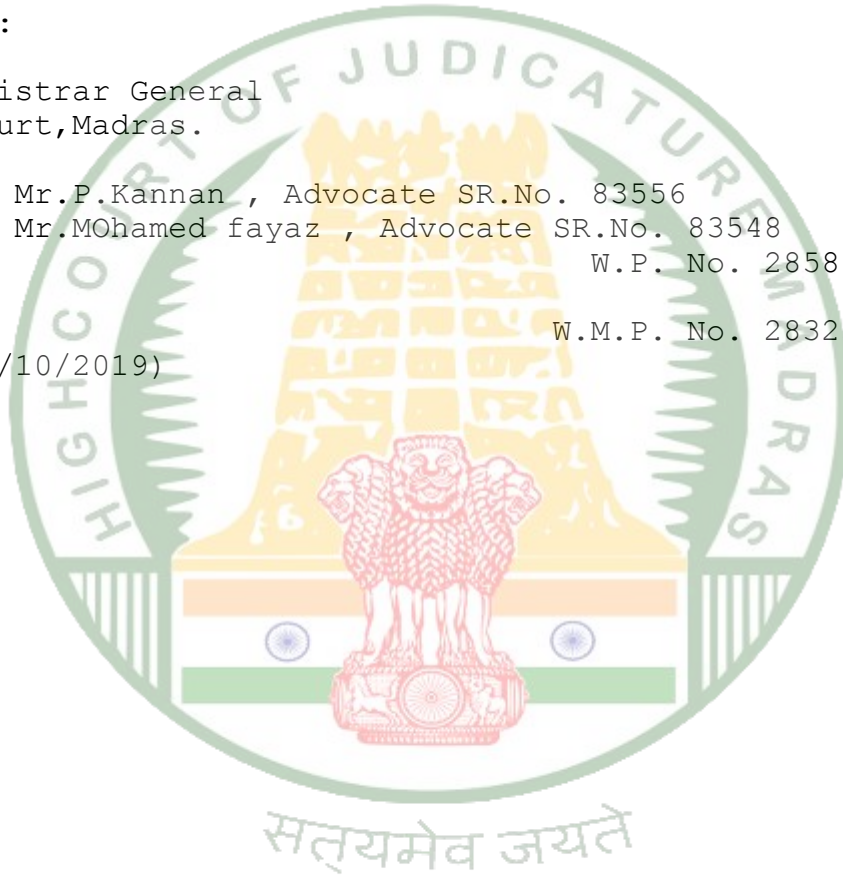
+1cc to Mr.P.Kannan , Advocate SR.No. 83556

+1cc to Mr.MOhamed fayaz , Advocate SR.No. 83548

W.P. No. 28580 of 2019
and

W.M.P. No. 28323 of 2019

A.SK(03/10/2019)



WEB COPY