BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 06.09.2019
CORAM
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE R.THARANI
W.A.(MD)No.908 of 2019
and
CMP(MD)No.8165 of 2019 and
W.P(MD)No.330 of 2018

S.Sasikala .. Appellant / Petitioner

Vs.

1.The Territory Manager (LPG),
Bharat Petroleum Corporation Ltd.,
Tanjore.

2.Jambulingam .. Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.(MD).No.330 of 2018 dated 19.02.2019.

Prayer in WP(MD). 330/ 2018 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari calling for the records relating to the impugned order passed by the respondent in his proceedings TNJ : LPG : TERR : SATHIYAS TIRUCHY dated 18.12.2017 and quash the same as illegal, arbitrary and in violation of principles of natural justice.

For Appellant : Mr.B.Saravanan
For Respondent-1: Mr.S.Natesh Raju

JUDGMENT

[Judgment of the Court was delivered by T.S.SIVAGNANAM, **J.**]

Heard Mr.B.Saravanan, learned counsel appearing for the appellant and Mr.S.Natesh Raju, learned Standing Counsel appearing for R1.

2. This Appeal by the Writ Petitioner is directed against the order dated 19.02.2019 in W.P.(MD)No.330 of 2019.

3. The Writ Petition was filed by the appellant challenging the order passed by the respondent Oil Corporation, cancelling the petitioner's LPG Dealership. The reason for cancellation is on the

ground that the appellant had violated the condition Nos.21 and 23 (a)(c) of the Distributorship Agreement, dated 07.07.2012. In the show-cause notice issued to the appellant, it is stated that the appellant had entered into a deed of partnership with one Jambulingam without obtaining prior permission from the respondent Oil Corporation and the same is in direct infraction of Clauses Nos.21 and 23(c) of Distributorship Agreement.

4. The matter came to the knowledge of the respondent Oil Corporation on account of the legal notice sent by Jambulingam, dated 13.06.2017 to the appellant and a copy was marked to the Territory Manager of the respondent Corporation at Tanjure. On receipt of the same, the respondent Oil Corporation had sent a communication dated 16.06.2017 stating that the appellant appears to have sold / sub-let the LPG Distributorship to a third party without the concurrence and authorization of the respondent Oil Corporation and it appears that the appellant has violated the Clauses 21 and 23 (c) of the Distributorship Agreement. The appellant was afforded an opportunity to offer his explanation. The appellant candidly accepted the arrangement between herself and Jambulingam, but pleaded that it is on account of severe financial crisis and she being a widow had no other option.

5. On receipt of the reply, a full-fledged show-cause notice, dated 08.08.2017 was issued to the appellant, calling upon the appellant to explain as to why the Distributorship Agreement should not be terminated. The appellant sent a reply dated 17.08.2017, in which, the appellant states that the agreement which she had entered into with one Jambulingam was on account of a loan transaction which was a temporary transaction to tide over the financial crisis. The arrangement / agreement was registered with the Registrar of Firms, Tiruchirappalli and not with an intention to create partnership, but only to secure the interest of Jumbulingam, who had advanced money to the appellant. Further, the appellant contended that she had made a request to the respondent to permit her to induct Mrs.S.Kirubha, as a partner in the business and that the said request was also pending. The respondent Oil Corporation rejected the objections filed by the appellant and terminated the distributorship vide order dated 18.12.2017. The order was put to challenge in the Writ Petition.

6. Mr.B.Saravanan, the learned counsel appearing for the appellant would contend that the impugned order of termination of Distributorship is a non-speaking order; none of the grounds raised by the appellant in the explanation offered by her, dated 17.08.2017 was considered and the substantial portion of the impugned order of termination is a verbatim repetition of the show-cause notice. Further it is contended that in terms of Clause 28(a) of the Distributorship Agreement, in the event the Distributor commits a delay, breach or default of any of the terms, conditions, covenants and stipulations contained in the Distributorship Agreement and fail

to remedy such breach within four days of the receipt of a written notice from the Corporation in that regard and then only termination can be resorted to. It is his further submission that such opportunity as provided for in clause 28(a) of the Distributorship Agreement was not granted to the appellant. This contention raised before us was in fact raised in the Writ Petition as well, however, the Learned Single Bench rejected the contention and dismissed the Writ Petition by the impugned order. This is how the appellant is before us by way of this appeal.

7. We have heard Mr.S.Natesh Raju, learned Standing Counsel for the respondent Oil Corporation.

8. The first question to be considered is whether Clause 28(a) of the Distributorship Agreement would come to the aid and assistance of the appellant. For better appreciation, we quotes the said clause;

> "29. Notwithstanding anything to the contrary herein contained, the Corporation shall also be at liberty at its entire discretion to terminate this Agreement forthwith upon or at any time after the happening of any of the following events, namely :--
>
> (a) If the Distributor commit a delay, breach or default or any of the terms, conditions, covenants and stipulations contained in the Distributorship Agreement and fail to remedy such breach within four days of the receipt of a written notice from the Corporation in that regard."

9. On a reading of the above clause it is amply clear that it is a stand alone provision apart from the other provisions contained in the Distributorship Agreement. The show-cause notice issued to the appellant was for violation of Clauses 21 and 23(c) of the Distributorship Agreement, which reads as follows:-

> "21. The Distributor shall not sell, assign, mortgage, or part with or otherwise transfer his interest in the distributorship or the right, interest or benefit conferred on him by this agreement to any person. In the event of distributor being a partnership firm any charge in the constitution of the firm, whether by retirement, introduction of new partners or otherwise howsoever will not be permitted without the previous written approval of the Corporation notwithstanding that the Corporation may have dealings with such reconstituted firm or impliedly waived or condoned the breach or default mentioned hereinabove by the Distributor. In the event of death of any of the partners, the Distributor shall

immediately inform the Corporation within the necessary particulars of the heirs and legal representatives of the deceased partner and it shall be the option of t he Corporation either to continue the distributorship with the said firm or to have a fresh agreement of distributorship with any reconstituted firm or to terminate distributorship agreement and the decision of the Corporation in that behalf shall be final and binding on all the parties concerned. No claim on premature termination for compensation or otherwise will be made sustainable against the Corporation on account of such termination.

23(c). Except with the previous written content of the Corporation: -

(i) the Distributor shall not enter into any arrangement, contract or understanding whereby the operations of the Distributor hereunder are or may be controlled / carried out and / or financed by any other person firm or company, whether directly or indirectly and whether in whole or in part."

10. To be noted that the appellant did not deny the fact that she had entered into a partnership with Jambulingam and the partnership was also registered with the Registrar of Firms, Tiruchirappalli. Thus, the violation was candidly admitted by the appellant and therefore in our opinion, nothing more was required to be done by the respondent Oil Corporation, except to terminate the dealership. However, the respondent Oil Corporation followed the procedures under the Distributorship Agreement, and issued a comprehensive show-cause notice. While replying to the show-cause notice also, the appellant did not dispute the fact that she entered into a deed of partnership with one Jambulingam. But, she would state that this is for the purpose of tide over the financial crisis faced by her. However, while obtaining a Distributorship, an agreement was entered into and the Clauses and the conditions contained in the agreement are fully bind the persons to whom the Distributorship is granted. Therefore, there is no question of extending any leniency or carving out exceptions or considering the explanation as offered by the appellant to get over the rigour of Clauses 21 and 23(c).

11. The learned counsel appearing for the appellant would rest his case on Clause 28(a). As pointed out earlier, the said clause commences with stand alone clause. In our view, the said clause cannot be read into Clause 21 or 23, which are substantive conditions and if violated, would be fatal to the case of the Distributors. Therefore, the reliance placed by the appellant on Clause 28(a) is not sustainable.

12. The learned counsel for the appellant pointed out that in the impugned order, the Clause 28(a) is also referred to. Though such a Clause has been referred to, the termination of the dealership was for violation of Clauses 21 and 23(c). We need not travel very far to examine the correctness of the termination, because the appellant admitted the violation and set up a defence that it is on account of a financial crisis faced by her. As pointed out earlier, there is no clause which provides for consideration of such contingency in the Distributorship Agreement.

13. The last submission of Mr.B.Saravanan, learned counsel for the appellant was that the impugned order is a non-speaking order. In the preceding paragraphs we have pointed out as to how the matter had proceeded from the stage of issuance of a show-cause on 08.08.2017. This was based on a legal notice issued by Jambulingam and a copy being marked to the respondent Oil Corporation. At the very first instance, when opportunity was granted to the appellant to give her reply, she had admitted that she had entered into a deed of partnership. As mentioned earlier, nothing more was required to be done by the Oil Corporation, but nevertheless a full-fledged show-cause notice was issued. Though it may be true that a substantive portion of the show-cause notice finds place in the impugned order, actual circumstances warrant the same to be done. The decision of the first respondent is contained in the last two paragraphs and since the violation has been admitted by the appellant, the impugned order of termination cannot be treated to be an order devoid of reasons nor an order vitiated by non-application of mind. Thus, for the above reasons, we do not find any good grounds to interfere with the orders passed by the Learned Single Bench.

14. In the result, the Writ Appeal fails and is dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The Territory Manager (LPG), Bharat Petroleum Corporation Ltd., Tanjore.

+1 CC to M/s.B.SARAVANAN, Advocate SR-85833.

+1 CC to M/s.S.NATESHRAJA, Advocate SR-86204.

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