

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.12.2020

C O R A M

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.21330 of 2007

Anandhi Agencies
Rep by its Proprietor,
Mrs.Anandhi
Vandavasi Thindivanam Road,
Thear, Vandavasi,
Thiruvannamalai District. Petitioner

vs.

The Chief Divisional Retail Sales Manager,
Indian Oil Corporation Ltd.,
Chennai Divisional Office,
500, Anna Salai, Teynampet,
Chennai-18. Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari calling for the records relating to the order dated 15.06.2007 in Ref:CDR/504 of the respondent and quash the same.

For Petitioner : Mr.A.R.L.Sundaresan, senior counsel
for Mrs.A.L.Ganthimathi

For Respondent : Mr.V.Ananthanatarajan

सत्यमेव जयते
O R D E R

I heard Mr.A.R.L.Sundaresan, the learned senior counsel for the Petitioner, and Mr.V.Anantha Natarajan, the learned counsel for the Indian Oil Corporation Ltd.

2. The order of termination dated 15.04.2007 of the fuel supply dealership is the subject matter of challenge herein. The Petitioner was appointed as a dealer of the Respondent Corporation under Dealership Agreement dated 30.11.2006 (the Dealership Agreement). There appears to be some uncertainty as to whether the dealership commenced in May 1999 or on 30.11.2006 but the same is not material for purposes of this case. The dealership was admittedly in respect of a dealer controlled

outlet. The period of dealership was 15 years, which would run either from May 1999 or 30.11.2006 depending on the date of commencement of dealership. In any event, clause 2 of the Dealership Agreement provides that the dealer would continue even after the said period of 15 years for successive periods of one year each until determined by either party by giving three months notice in writing.

3. On 03.05.2007, the Manager (Vigilance) of the Respondent Corporation inspected the Petitioner's retail outlet and took samples of petrol and diesel for testing and investigation. As regards the samples, no evidence of adulteration was found. However, based on such inspection, a show cause notice was issued to the Petitioner on 10.05.2007 alleging that the totalizer seal in the high speed diesel pump was not intact. Consequently, it was alleged that the Petitioner committed a breach of clause 8(i), 45(l) and 45(m) of the Dealership Agreement and the provisions of the Marketing Discipline Guidelines, 2005. Accordingly, the Petitioner was called upon to show cause as to why the dealership should not be terminated. Thereafter, it appears that the Labour Inspector inspected the retail outlet and, based upon such inspection, issued a letter dated 18.05.2007 to the Petitioner wherein it is stated that the totalizer seal was found intact but one of the wires had snapped at the point where it had been twisted and tightened while sealing, and this could have occurred due to excessive tightening. With regard to the functioning of the pump's meter, it was concluded that, for every 5 litres, there was a shortfall of 20-30 ML. The petrol pump was, however, found to be functioning within permissible tolerance limits. Based on the said inspection, the Petitioner submitted an explanation dated 19.05.2007 to the Respondent stating that the outlet's high speed diesel (HSD) and motor spirit/petrol (MS) pumps were functioning in a proper manner and that there is no adulteration. As regards the totalizer seal also, it was specifically stated that the seal was properly tagged except for a single wire/thread. This letter referred to the letter dated 18.05.2007 of the Labour Inspector, which was enclosed. On the ground that the said explanation was not considered by the Respondent, the Petitioner filed W.P.No.18596 of 2007. This writ petition was disposed of by order dated 30.05.2007 whereby the Respondent Corporation was directed to consider the representation dated 19.05.2007 on merits and dispose of the same within a period of two weeks from the date of receipt of copy of the said order. Pursuant thereto, the impugned order was passed on 15.06.2007, which resulted in the filing of the present writ petition.

4. Mr.A.R.L.Sundaresan, the learned senior counsel, invited the attention of the Court to the show cause notice, the letter

dated 18.05.2007 and the explanation dated 19.05.2007. On this basis, he contended that the Petitioner had provided an explanation to the effect that the totalizer seal was intact albeit for the one wire / thread which had been broken. Unfortunately, he contended that the Respondent Corporation did not duly consider either the explanation of the Petitioner or the letter dated 18.05.2007 which was annexed to such explanation. Instead, the Respondent Corporation merely stated that the explanation was found to be not satisfactory. His next contention was that the impugned order refers to three clauses of the Dealership Agreement. The first of those clauses, namely, No.8(i) refers to carrying out unauthorized repairs to the premises. Because no such repairs were carried out, he submits that the said clause is irrelevant. As regards clause 45(l) and 45(m), he submits that clause 45(l) deals with the failure by the dealer to adhere to the instructions/guidelines issued from time to time by the Corporation in connection with marketing discipline and/or safe practices to be followed in the sale or supply and storage of the Corporation's products or otherwise. In the present case, the Petitioner had followed the guidelines issued by the Corporation as regards the aforesaid. Therefore, there was no breach of clause 45(l). As regards clause 45(m), he submits that the Respondent Corporation did not conclude that there was contamination or adulteration or tampering with the quality of the products supplied by the Corporation and, therefore, clause 45(m) was also not violated.

5. His next contention is that the Labour Inspector is the appropriate authority under the Standards of Weights and Measures Act, 1976, which was subsequently repealed and replaced by the Legal Metrology Act, 2009. In terms of these enactments, he submits that the seal is affixed by the appropriate authority and not by the Respondent Corporation. Consequently, if action has to be taken on the ground that the totalizer seal is broken, the participation of the statutory authority is necessary. His next contention was that this Court may exercise jurisdiction notwithstanding the existence of an arbitration clause. In support of this contention, he refers to and relies upon the judgment of the Hon'ble Supreme Court in Harbanslal Sahnia and Another v. Indian Oil Corporation Ltd., 2003 (1) CTC 189. By drawing reference to paragraphs 2, 4 and, in particular, 7 thereof, he submits that the existence of an arbitration clause or an alternative remedy would not always result in the rejection of the writ petition. In paragraph 7, the Hon'ble Supreme Court set out three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is violation of the principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction. In the case at hand, he submits that the principles of natural justice were violated inasmuch as the

explanation of the Petitioner and the communication from the Labour Inspector were not taken into consideration.

6. Mr.N.Anantha Natarajan, the learned counsel for the Respondent, submitted that the present dealership is a dealer-controlled outlet. Consequently, the Respondent Corporation does not have any control over the day-to-day operations and, in particular, over the maintenance of the equipments including the seal used thereon. His next submission is that disputed questions of fact are involved in this case inasmuch as the stand of the Respondent Corporation is that the totalizer seal was not intact whereas the Petitioner contends that only one wire was broken. Moreover, he submits that the totalizer seal cannot be said to be intact if a wire is broken. He also referred to the counter affidavit, in this connection, and pointed out that the inspection carried out by the Labour Inspector cannot be taken into consideration for the three reasons that are set out in paragraph 8 of the counter affidavit. He also relied upon paragraph 11 of the counter affidavit wherein the Respondent has set out the requirements if it is to be concluded that the totalizer seal is intact. For all these reasons, he submits that the impugned order is not liable to be interfered with. He submits that even if the impugned order is set aside, the Respondent should be permitted to have a de novo hearing. In support of his contentions, he relied upon the recent judgment of the Division Bench of this Court in Indian Oil Corporation Limited v. Lt. Col. Sasikumar (Retd.) (2020) 7 MLJ 688 (Lt.Col. Sasikumar), wherein this Court concluded that the writ court would not ordinarily exercise discretionary jurisdiction when there is an alternative remedy by way of arbitration.

7. I considered the submissions of the learned senior counsel/learned counsel for the respective parties and examined the materials on record.

8. The principal question that arises for consideration is whether this is an appropriate case for the exercise of jurisdiction by this Court. Notwithstanding the admitted position that there is an arbitration clause in the Dealership Agreement, for this purpose, it is necessary to analyse the scope of the present dispute. The Petitioner has challenged the order dated 15.06.2007 primarily on the ground that the explanation dated 19.5.2007 and the communication dated 18.05.2007 of the Labour Inspector were not duly considered while passing the impugned order. Consequently, the said contention should be tested by examining the impugned order. Upon perusal thereof, I find that the following is stated with regard to the explanation submitted by the Petitioner:

"Please refer to our Show Cause Notice No.CDR/504 dated 10.05.2007 and your explanation letter dated 19.5.2007. We have carefully considered the contents mentioned in your above referred explanation and found that the same is not satisfactory."

9. Other than what is set out above, the Respondent Corporation has not stated as to why the explanation of the Petitioner was rejected. As regards the Labour Inspector's communication dated 18.05.2007, I find that there is no reference to it at all in the impugned order. Needless to say, nothing is stated in the impugned order as to why the said communication was not taken into consideration. While the Respondent has set out three reasons in paragraph 8 of the counter affidavit as to why the said communication of the Labour Inspector is not valid, the settled legal position, as held in judgments such as Commissioner of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16, and Mohinder Singh Gill v. Chief Election Commissioner, New Delhi, (1978) 1 SCC 405, is that the impugned order of a public authority should be tested on the terms thereof and not by examining what is stated in support thereof in subsequent communications, affidavits or other documents filed before the Court. The same objections also apply to the explanation provided by the Respondent Corporation in paragraph 11 of the counter affidavit as to why it cannot be said that the totalizer seal was intact when one wire was broken. All these statements should have been made by the Respondent Corporation in the impugned order. In case the impugned order were a reasoned order which took into consideration the explanation of the Petitioner and the letter of the Labour Inspector, and provided cogent reasons for the rejection thereof by citing technical and factual aspects, the learned counsel for the Petitioner would be right in contending that there are disputed questions of fact which should not be examined by the writ court. However, in this case, one is not dealing with a reasoned order. Consequently, I am of the view that this case qualifies as a case wherein the writ court may exercise discretionary jurisdiction as per principles laid down in Harbanslal Sahnia. This is also in line with the principles laid down by the Division Bench of this Court in Lt.Col. Sasikumar.

10. For the reasons set out above, the impugned order dated 15.06.2007 is not sustainable. Accordingly, the said order is quashed. Nonetheless, it is made clear that this order shall not preclude the Respondent Corporation from initiating fresh proceedings in accordance with the Dealership Agreement in respect of the alleged violations that form the subject matter

of this writ petition or from taking any other measures in exercise of its rights under the Dealership Agreement.

11. In the result, this writ petition stands allowed on the above terms. No costs.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

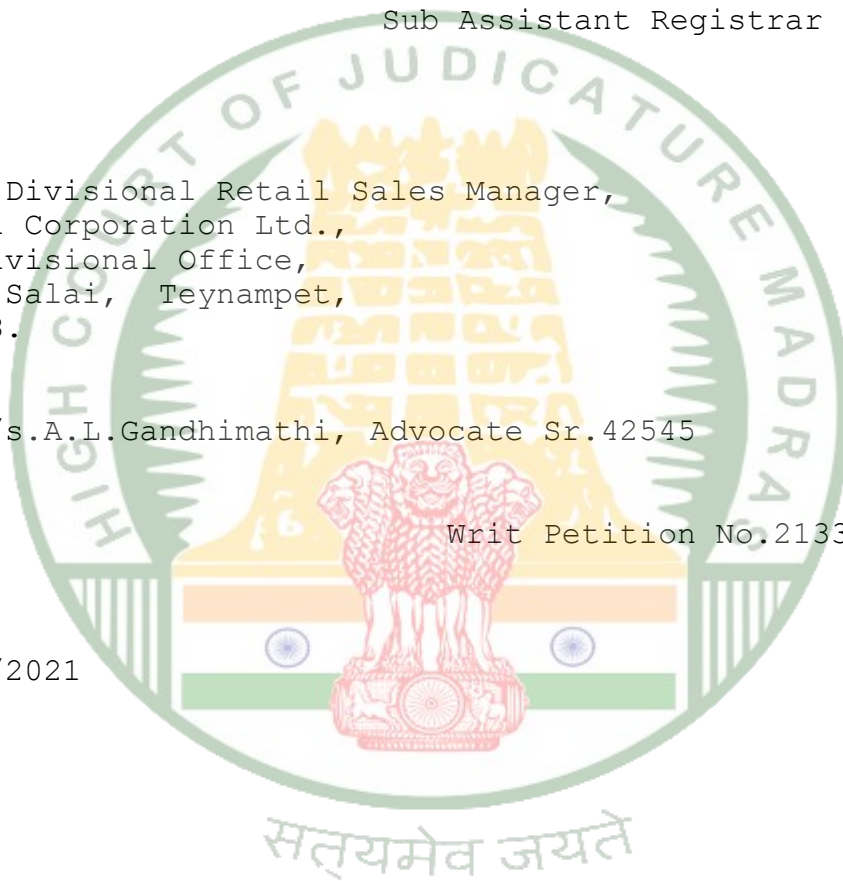
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To

The Chief Divisional Retail Sales Manager,
Indian Oil Corporation Ltd.,
Chennai Divisional Office,
500, Anna Salai, Teynampet,
Chennai-18.

+1cc to M/s.A.L.Gandhimathi, Advocate Sr.42545

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