

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2021

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.14421 of 2020 &
WMP.No.17908 of 2020

M/s.Anbu HP Gas Agency,
Rep by its Proprietrix,
M.Kaveri,
No.365/3C, Kumaran Nagar,
Siruvachur Post,
Attur Taluk, Salem District.

...Petitioner

Vs

1. The Union of India,
Rep. by its Secretary,
Ministry of Petroleum and Natural Gas Commission,
Shastri Bhawan, New Delhi.
2. The Senior Regional Manager,
Hindustan Petroleum Corporation Ltd.,
SIDCO Industrial Estate,
Kappalur, Madurai.
3. The Chief Area Manager,
Hindustan Petroleum Corporation Ltd.,
Salem.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus forbearing the respondents 1 and 2 from in any manner transferring the existing customers of the petitioner to any other distributors.

For petitioner ... Mr.Arl.Sundaresan, Senior Counsel,
for Mr.Al.Gandhimathi

For Respondents 2 & 3... Mr.Vijayan
for M/s.Kings and Patridge

ORDER

This writ petition has been filed for a mandamus to forbear the respondents 1 & 2 from transferring the existing customers of the petitioner to any other distributors.

2. The case of the petitioner is that arbitrarily and illegally, the respondents without any prior notice have transferred the customers of the petitioner to other distributors. It is the case of the petitioner that last such transfer made by the respondents was in respect of 8200 customers. It is also the case of the petitioner that under the contract entered into with the respondents 2 & 3, the petitioner had to work hard for getting more number of customers. According to the petitioner, only due to the hard work done by the petitioner, they were able to get more number of customers. However according to the petitioner, arbitrarily and illegally, the customers of the petitioners were being transferred by the respondents 1 and 2 to other distributors. In such circumstances, this writ petition has been filed for a mandamus to forbear the respondents 1 & 2 from transferring the existing customers of the petitioner to any other distributors.

3. Heard Mr.Arl.Sundaresan, learned Senior Counsel representing Mr.Al.Gandhimathi, learned counsel for the petitioner and Mr.Vijayan, learned counsel for the second and third respondents. There is no representation on the side of the first respondent.

4. Admittedly, the respondents have been transferring the customers of one distributor to other distributor based on "Market Restructuring - Transfer of Customers" Circular dated 04.01.2018. Admittedly, the petitioner has not challenged the said Circular till date. In this writ petition, without challenging the aforementioned Circular, the petitioner has only sought for mandamus to forbear the respondents 1 & 2 from transferring the existing customers of the petitioner to any other distributors.

5. Learned counsel for the respondents 2 & 3 would submit that the said Circular was challenged by another distributor before the Division Bench of this Court and the said Circular was upheld by the Division Bench of this Court in W.P.(MD). No.12607 of 2017 dated 07.07.2017 and W.P.(MD).No.1963 of 2018 dated 13.03.2018. For this submission, learned Senior Counsel for the petitioner would submit that he was not a party to the said proceedings. He would further submit that aforementioned Circular was the subject matter of challenge before the Division Bench of Bombay High Court and the Division Bench of Bombay High Court has struck down the said circular by its order dated 30.09.2019 where the concerned public sector oil corporation was Bharat Petroleum. According to the learned Senior Counsel for the petitioner, since the circular has been struck down, the respondents are barred from transferring the existing customers of the petitioner.

6. After hearing the submissions, this Court pointed out to the learned Senior Counsel for the petitioner that without challenging the aforementioned Circular, the prayer for mandamus in this writ petition is unsustainable. Learned Senior Counsel for the petitioner sought time to file an appropriate writ petition challenging the aforementioned Circular wherein the respondents were empowered to transfer the existing customers of the petitioner to other distributors.

7. This Court after considering the rival submissions of the learned counsels on either side is of the considered view that the petitioner should not be deprived of an opportunity to challenge the aforementioned Circular. The petitioner was having the benefit of interim order granted by this court in WMP.No.17908 of 2020 wherein an order of interim injunction was granted to the petitioner on 07.10.2020 restraining the respondents 2 and 3 from transferring the existing customers of the petitioner to other distributors. Since the learned Senior Counsel for the petitioner on instructions would submit that the petitioner desires to file a separate writ petition challenging the aforementioned Circular, the interim injunction granted by this Court on 07.10.2020 in WMP.No.17908 of 2020 can be continued for a further period of two weeks from the date of receipt of a copy of this Order to enable the petitioner to challenge the aforementioned Circular in accordance with law.

8. In the result, this writ petition is disposed of and the interim injunction granted by this Court on 07.10.2020 in W.M.P.No.17908 of 2020 shall stand extended for a further period of two weeks from the date of receipt of a copy of this Order and the petitioner is granted liberty to challenge the "Market Restructuring - Transfer of Customers" Circular dated 04.01.2018 in accordance with law.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Secretary, Union of India,
Ministry of Petroleum and Natural Gas Commission,
Shastri Bhawan, New Delhi.

2. The Senior Regional Manager,
Hindustan Petroleum Corporation Ltd.,
SIDCO Industrial Estate,
Kappalur, Madurai.

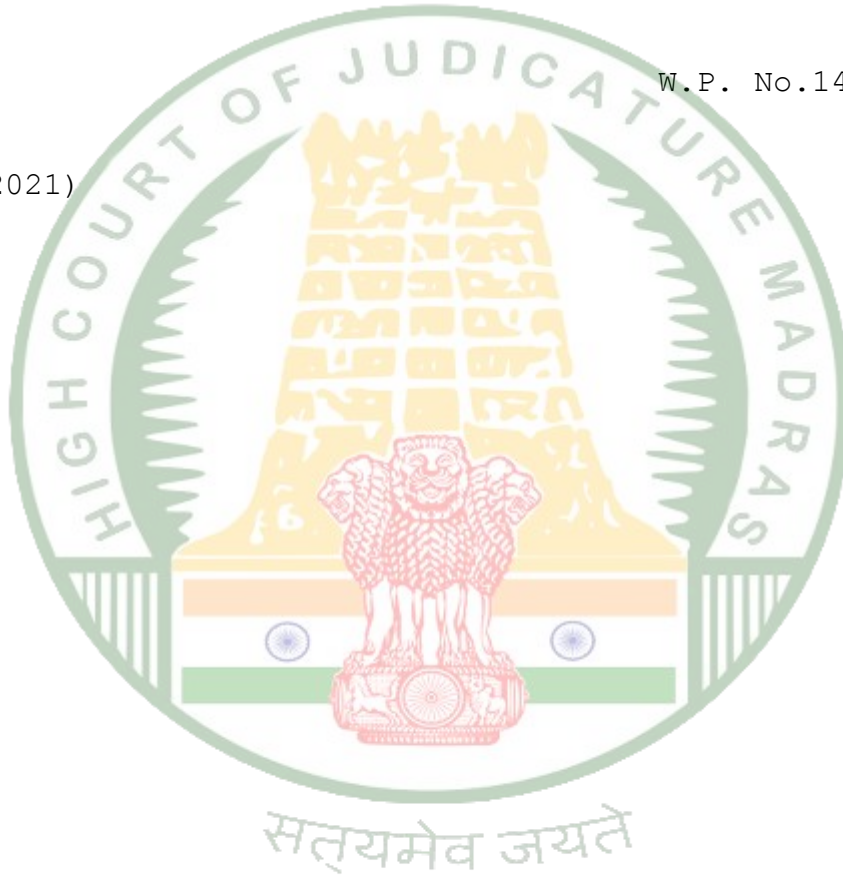
3. The Chief Area Manager,
Hindustan Petroleum Corporation Ltd.,
Salem.

+1 CC to M/s. King and Partridge, Advocate sr 5487

+1 CC to Mrs.A.L. Gandhimathi, Advocate sr 5676.

W.P. No.14421 of 2020

MGR(CO)
SP(23/02/2021)



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