



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2021

CORAM

THE HON'BLE MR.JUSTICE R. MAHADEVAN

Writ Petition No. 34703 of 2014

and

Writ Petition No. 38409 of 2015

V.Chitra

... Petitioner in both WPs

Versus

Indian Oil Corporation Limited,
(Marketing Division),
Salem Divisional Officer,
No.234, 1st Floor, NH-7,
Salem Bangalore Bypass Road,
Kondalampatti,
Salem 636 010.

... 1st Respondent in WP.No.34703 of 2014 and
... 2nd Respondent in WP.No.38409 of 2015

Indian Oil Corporation Limited,
Corporate Office,
536, Annasalai, Teynampet,
Chennai - 600 018.
Rep.by General Manager.

... 1st Respondent in WP.No.38409 of 2015

Prayer in W.P.No.34703 of 2014: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records relating to the impugned order dated 10.12.2014 in reference No.SLMDO/Vengateswara passed by the respondent and quash the same.

Prayer in W.P.No.38409 of 2015: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Mandamus forbearing the respondents from dismantling the instruments in the Petrol and Diesel Oil Retail Outlet under the name and style of Sri.Vengageshwara Traders at No.51/2, Opp. Oilpattai Police Station, Oilpatti, Namakkal 637 406 and consequently to give opportunity to the petitioner to give proper explanation in order to satisfy the respondents to restore the Petrol and Diesel Oil Retail outlet in the name and style of



Sri.Vengageshwara Traders based on the petitioner's representation dated 18.11.2015.

For Petitioner : Mr. Chellapandian
in both the Writ Petitions

For Respondent : Mr.R.Abdul Saleem
in WP.No.34703 of 2014

For R1 & R2 : Mr. Mohammed Fayae Ali
in WP.No.38409 of 2015

COMMON ORDER

Both these writ petitions are filed by the petitioner, who was a dealer appointed by the respondents to run a Petrol Bunk. The first writ petition No. 34703 of 2014 was filed by the petitioner challenging the order dated 10.12.2014, terminating the dealership of the petitioner for violations of the conditions contained in the Dealership agreement. The second writ petition namely WP No. 38409 of 2015 was filed by her with a prayer to issue a Writ of Mandamus forbearing the respondents from dismantling the instruments in the Petrol and Diesel Oil Retail Outlet under the name and style of Sri Vengageshwara Traders at No.51/2, Opp. Oilpattai Police Station, Oilpatti, Namakkal 637 406 and consequently to give opportunity to the petitioner to give proper explanation in order to satisfy the respondents to restore the Petrol and Diesel Oil Retail outlet in the name and style of Sri.Vengageshwara Traders based on the petitioner's representation dated 18.11.2015.

2. According to the petitioner, she was running a Petrol and Diesel Oil Retail outlet under the name and style of Sri Vengageshwara Traders through a Memorandum of Agreement dated 22.07.2008 entered into with the respondents. It is her contention that on 12.07.2013, when she and her husband were in Pollachi, one Velu and others, along with deadly weapons, trespassed into the petrol station, entered into a quarrel with the employees in the petrol station and tampered the tantalizer cap without breaking the seal and thereby caused damaged to two numbers of dispensing unit. In this context, the petitioner had given a written complaint and a case in Crime No.120/13 was registered. While so, on the same day namely 12.07.2013 the officials of the respondents carried out an inspection pursuant to which a show cause notice dated 24.10.2013 was issued to her calling upon her to give explanation to the lapses pointed out therein. The petitioner also submitted a detailed reply letter dated 19.11.2013 feigning ignorance as to the alleged tampering of the tantalizer cap. Not satisfied with the explanation of the petitioner, the respondent, by the order dated 10.12.2014,



terminated the dealership of the petitioner.

3. Upon notice, the respondent filed a detailed counter affidavit stating that the termination letter was issued to the petitioner after completing all the procedures and after giving enough opportunity to her. According to the respondent, even though the samples collected from the retail outlet has passed the quality test, Density checks, and Stock variation in the products, it was observed that 'Totaliser' seal cover was tampered, which is a critical irregularity. Therefore, for having committed the violation of the terms and conditions of the dealership agreement, even though the Retail Outlet has passed other tests, action was warranted as per the terms and conditions of dealership agreement for tampering with the seal. Since, it was clearly established that the totaliser was tampered by removing the totaliser cap, it constitutes a critical irregularity under Clause No.8.2.iii (5.1.3 read with 5.1.2) of the dealership agreement. The respondent also would contend that as against the termination of dealership, under Clause 8.9 of the terms and conditions of the agreement, the petitioner has an alternate remedy of filing an appeal before the Executive Director (Retail) or any other officer equal to the rank of an Executive Director. However, without availing such an alternative remedy, the petitioner has filed the present writ petition. Therefore, the respondents prayed for dismissal of the writ petition.

4. The learned counsel for the petitioner would submit that it was not the petitioner, who had tampered the totalizer cap. The learned counsel for the petitioner placed reliance on the registration of First Information Report in Crime No. 120 of 2013 against one Annamalai and three others to contend that the damage caused to the totaliser cap is due to the unruly behaviour of some third persons.

5. On the other hand, the learned counsel for the respondents 1 and 2 would contend that as a dealer, it was the duty of the petitioner to ensure that the assets of the Corporation are not tampered with in any manner. The petitioner cannot be permitted to simply throw the blame on some one else. The act of the petitioner clearly falls within Clauses 16, 43, 44 and 58 (h) and (m) of the dealership agreement. The Corporation has therefore rightly terminated the dealership agreement with the petitioner after following all the procedures contemplated under law.

6. Heard the learned counsel for the petitioner as well as the learned counsel for the respondents 1 and 2. The order of termination discloses that on the basis of specific complaint, an inspection was conducted on 12.07.2013 during



which it unfolded that the totalizer seal was tampered with and the totalizer cap was removed and adjusted, which resulted in erratic delivery status shown in the sale of petroleum products. According to the respondent, this is a serious lapse committed by the petitioner and it warranted termination of the dealership agreement. It is also seen that a show cause notice was issued to the petitioner on 24.10.2013 enclosing the inspection report. The petitioner also submitted a reply on 19.11.2013 and thereafter, the order of termination was passed on 10.12.2014. It is apparent that the dealership with the petitioner was terminated for contravention of conditions of the dealership agreement. Further, if the petitioner is in any manner aggrieved by the termination of dealership, it is open to her to prefer an appeal before the Executive Director of the Corporation as contended by the respondent. In matters of contractual dispute, this Court cannot examine as to the correctness or otherwise of the contentions put forth by both sides on factual issues. When an alternative remedy is available, the discretionary jurisdiction conferred under Article 226 of The Constitution of India will not be of any avail. Therefore, this Court is of the view that it is always open to the petitioner to file an appeal to the Executive Director of the Corporation. If any such appeal is filed, the appellate authority shall entertain it, by excluding the period during which the writ petition was pending before this Court. Further, the appeal, if any, filed by the petitioner shall be considered by the appellate authority after giving an opportunity of hearing to the petitioner and thereafter, appropriate orders shall be passed on merits and in accordance with law.

7. With the above direction, both the writ petitions are disposed of. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

av/rsh

To

1. The General Manager
Indian Oil Corporation Limited,
Corporate Office
536, Annasalai, Teynampet,
Chennai - 600 018.



2. Indian Oil Corporation Limited,
(Marketing Division),
Salem Divisional Officer,
No.234, 1st floor, HB -7,
Salem Bangalore Bypass Road,
Kondalampatti, Salem 636 010.

+1cc to Mr.M.Rajendran, Advocate, S.R.No.33921
+1cc to Mr.Rajendran , Advocate, S.R.No.33563

WP No.34703 of 2014 and
WP No. 38409 of 2015

AJB (CO)
CT/25/08/2021