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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.23165 of 2021

M/s. Sri Venkatesa Traders
rep. By Smt. Chitra, Partner
37/2-D, Salem Main Road
Mettur Dam-2, Salem District.

.. Petitioner

Vs.

Indian Oil Corporation Ltd,
Rep. By its Divisional Retail Head,
Marketing Division,
Salem Divisional Office,
Salem 636 010.

.. Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue an order, direction or writ, more particularly writ in the nature of WRIT OF CERTIORARIFIED MANDAMUS, calling for the records of the impugned order of termination of the petitioner's Petroleum Retail Outlet dealership dated 21.10.2021 in Ref: SLMDO/R/3113 passed by the Respondent and quash the same, consequently direct the respondent to continue the supply of petroleum products to the petitioner's dealership as per the dealership agreement dated 23.11.2017.

For Petitioner : Mr.P.S.Raman, SC, for
Mr. M.R.Jothimanian

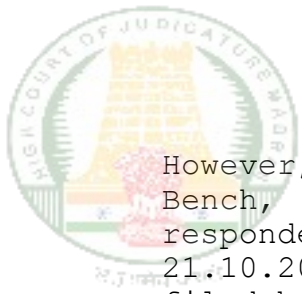
For Respondent : Mr.Abdul Saleem

O R D E R

The petitioner has filed this writ petition seeking issuance of an order, direction or writ, more particularly writ in the nature of WRIT OF CERTIORARIFIED MANDAMUS, calling for the records of the impugned order of termination of the petitioner's Petroleum Retail Outlet dealership dated 21.10.2021 in Ref: SLMDO/R/3113 passed by the Respondent and quash the same, consequently direct the respondent to continue the supply of petroleum products to the petitioner's dealership as per the dealership agreement dated 23.11.2017.



2. The case of the petitioner is that the petitioner viz., M/s. Sri Venkatesa Traders, which is a partnership firm consisting of Mr. Gopalan and G. Ravi as partners dealing in petroleum products under the respondent/Indian Oil Corporation. On 02.05.1995, one of the partner, viz., Gopalan died due to old age and, therefore, one Vatsala was inducted as partner along with the other partner G.Ravi with the approval of the respondent. Thereafter the petitioner firm was reconstituted and the same has been approved by the respondent corporation. In the year 2005, one Kannan was appointed as Manager in the petitioner firm, due to ill health of the partner's son who was under medical treatment at Chennai Hospital. In the year 2006, the said Kannan had forged documents and inducted himself as one of the partners of the petitioner's firm without the knowledge of the respondent and the original partners. Coming to know of this act, the petitioner concerned lodged a police complaint on 28.09.2006 before the Superintendent of Police, Salem. Further the petitioner's firm also submitted before the Commercial Tax Officer that they had not changed its partners and stated that Ravi and Vatsala were the partners and also submitted that the petitioner's firm was never reconstituted and that Kannan has not been inducted as partner and the said fact was also intimated to the respondent corporation on 27.06.2008. However, without considering the said fact, the respondent corporation passed suspension order on 17.09.2008 on sales and supplies. Thereafter on 19.09.2008, show cause notice was issued by the respondent by stating that Kannan was inducted as one of the partner without permission of the respondent and that the petitioner firm violated the Dealership Agreement. Aggrieved by the said order, the petitioner filed W.P. No.23219/08 challenging the show cause notice of the respondent corporation in which this Court granted an order of interim stay. In the meanwhile, one of the partner, viz., G.Ravi died on 29.01.2013 due to illness following which on 29.04.2013, the petitioner made an application before the respondent for reconstitution of petitioner's firm for dealing in petroleum products but the said application was rejected by the respondent by stating that earlier writ petition in W.P. No.23219 of 2008 was pending. Challenging the rejection order, the petitioner filed a writ petition in W.P.No.33695 of 2013 and this Court, by order dated 03.01.2017 set aside the rejection order and allowed the writ petition. Thereafter, the respondent issued a letter on 04.11.2017 approving the for reconstitution of the petitioner firm following which on 23.11.2017, the dealership agreement was executed in between the petitioner and the respondent. Further, the petitioner paid a sum of Rs.5,00,000/- towards reconstitution fees and the same has been approved by the Respondent Corporation. In the meanwhile, appeal filed against the order passed in WP No.23219/08, the Division Bench of this Court in W.A.No.2681/18 permitted the respondent to pass orders.



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However, without considering the directions of the Division Bench, the impugned termination order has been passed by the respondent supply of petroleum products was stopped from 21.10.2021. Challenging the same, the present writ petition is filed by the petitioner.

3. Learned counsel appearing for the petitioner submits that even as per clause 61(a) of the Dealership agreement dated 02.05.1995 and subsequent agreement dated 23.11.2017, if any dispute arose between the parties, the parties are to resort to the arbitration clause available in the said agreement. However, without resorting to the arbitration procedure and taking into consideration the subsequent events/developments and the communication between the parties, which was the essence of the order passed by the Division Bench when direction was issued to consider the representation and pass appropriate orders, the respondent, relying on the induction of one Kannan, which was done without the knowledge of the petitioners for which complaint has been already been lodged before the law enforcing agency, the present impugned order is passed, which is wholly unsustainable and reveals total non-application of mind and also wholesome violation of principles of natural justice. In the above circumstances, learned counsel for the petitioner prays that this Court may permit the petitioner to invoke the arbitration clause as provided in clause 61(a) of the dealership agreement and till the disposal of the arbitrary proceedings, this Court may direct the respondent to continue the supply of petroleum products to the petitioner and further submitted that the petitioner is ready to abide by any condition as imposed by the respondent corporation.

4. The learned counsel appearing for the respondent corporation while fairly submitted that arbitration clause exists in the dealership agreement, however, submitted that acts of inducing another partner has been done without the knowledge of the respondent, which is per se impermissible and the Division Bench of this Court directed the respondent corporation to pass orders resulting in the passing of the impugned termination order. He therefore submits that no interference is called for with the order passed by the respondent corporation.

5. The facts relating to the various partners breathing their last and induction of one Vatchala as partner are not disputed by the petitioner. The main contention of the petitioner is that subsequent to the death of one of the partner, viz., Gopalan, one Kannan, who was initially appointed as Manager had forged documents and had inducted himself as partner of the firm, which came to the knowledge of the petitioner resulting in complaint being lodged before the law enforcing agency. Against the said act, the respondent



corporation had taken action against the petitioner and issued show cause notice which resulted in filing of W.P. No.23219 of 2008 in which interim order was granted. Against the said order, the respondent corporation filed appeal.

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6. Pending the appeal, application was made by the petitioner for reconstitution of the petitioner's firm and also for dealing with petroleum products, which on rejection was challenged before this Court by filing W.P. No.33695/12 and this Court, vide order dated 3.1.17 had set aside the order of rejection and allowed the writ petition. Pursuant to the same letter was issued approving the reconstitution of the petitioner's firm and fresh dealership agreement was executed between the petitioner and the respondent corporation upon payment of the necessary dealership fees.

7. However, thereafter, the appeal filed by the respondent against the order in W.P. No.23219/08 was taken up by the Division Bench in W.A. No.2681/18. A perusal of the said order reveals that the Division Bench had given direction to the respondent to pass final orders after considering the subsequent events/developments and the communication of the petitioner dated 14.9.2108. However, the direction of the Division Bench has resulted in the impugned order of termination and stoppage of supply of petroleum products from 21.10.21.

8. When an order has been passed by the Division Bench directing the respondent to consider the subsequent events/developments and communication of the petitioner dated 14.9.2018, this Court is at a loss to understand as to how the impugned order of termination came to be passed as it reveals total non-application of mind to the directions issued by the Division Bench. The subsequent events/developments and the communication of the petitioner have not been taken into consideration by the respondent while passing the impugned order. It is to be borne in mind that a fresh dealership agreement has been entered into for which a sum of Rs.5,00,000/- has also been collected from the petitioner and subsequently dealership agreement was renewed on 25.11.17. The respondent, on the basis of order in W.P. No.33695 of 2013 has considered the materials and renewed the dealership agreement, this Court is at a loss to understand the basis on which the present termination order came to be passed, when there is a clear direction by the Division Bench to consider the subsequent events/developments and the communication of the petitioner.

9. The above act of the respondent corporation in not considering the order of the Division Bench in proper perspective and following the directions issued therein by considering the subsequent events/developments and the



communication of the petitioner reveals total non-application of mind and, therefore, the impugned order passed by the respondent corporation is wholly unsustainable.

10. For the reasons aforesaid, this Court is inclined to set aside the impugned order dated 21.10.2021 passed by the respondent and the matter is remitted back to the respondent and the respondent is directed to consider the case of the petitioner on the basis of the subsequent events/developments and also the communication of the petitioner dated 14.9.2018 as ordered by the Division Bench of this Court in W.A. No.2681/18 and pass appropriate orders. In the mean time, the respondent corporation is directed to supply the petroleum products to the petitioner till a decision is taken on the basis of the direction issued by the Division Bench in W.A. No.2681/18.

11. This writ petition is allowed with the aforesaid observations and directions. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sma/anu

To

The Divisional Retail Head,
Indian Oil Corporation Ltd,
Marketing Division,
Salem Divisional Office,
No.234, Salem Bangalore By-Pass Road,
Kondalampatty, Salem 636 010.

+1cc to Mr. M.R.Jothimanian, Advocate Sr No.59147

+1cc to Mr. Abdul Saleem, Advocate Sr No.59704

W.P.No.23165 of 2021

CP (CO)
PR (03/12/2021)