



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.06.2021
PRONOUNCED ON : 18.06.2021
CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P(MD)Nos.15950 and 16940 of 2013

and

M.P. (MD) .No. 1 & 1 of 2013 and

W.M.P. (MD) .Nos.3458 and 3459 of 2017 in W.P(MD) .No.15950 of 2013

(Through video conferencing)

Piyari&Co.,
Rep. by its Proprietor
N.Niyamath Ali

.. Petitioner in both cases

Vs.

1.The Hindusthan Petroleum Corporation Ltd.,
Rep. by its Senior Regional Manager,
No.7, Rakesh Towers,
Bye Pass Road, Madurai-625 010.

2.The Hindusthan Petroleum Corporation Ltd.,
Sales Depot,
Irugur, Coimbatore.

.. Respondents in both cases

3.The Inspector of Police,
Ottanchathiram Police Station,
Dindigul.

.. 3rd Respondent in W.P(MD) .No.15950 of 2013

Prayer in W.P(MD) .No.15950 of 2013: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the respondents 1 and 2 herein to supply the petroleum products to the petitioner in the light of the dealership of the petitioner in ref.CBRO/PNR/RET dated 23.03.2010 issued by the 1st respondent for sale of their petroleum products and consequently direct the 3rd respondent to give adequate police protection for smooth functioning and day to day administration of the petitioner's dealership business.

Prayer in W.P(MD) .No.16940 of 2013: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 1st respondent in Ref.MDRO/JS/RET dated 27.09.2013 quash the same and consequently direct the respondents herein to supply the petroleum products to the petitioner in accordance with the dealership Regulations without any further delay.



In both cases:

For Petitioner : Mr.Kannan
for C.Jegannathan
For Respondents : Mr.Sridhar
for R1 and R2 in both cases
Mr.M.Lingadurai
Government Advocate (Civil Side)
for R3 in W.P.(MD).No.15950 of 2013

WEB COPY

COMMON ORDER

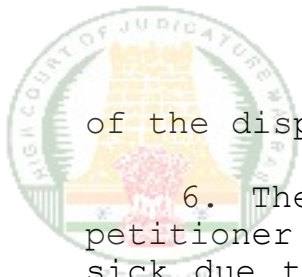
The petitioner filed W.P.(MD).No.15950 of 2013 seeking for the issue of writ of mandamus directing the first and second respondents to supply petroleum products to the petitioner as per the dealership agreement. After the filing of this writ petition, the dealership agreement itself came to be terminated by the Petroleum Corporation and challenging the same W.P.(MD).No.16940 of 2013 has been filed before this Court.

2. The petitioner, who claims to be the sole proprietor was given dealership by the respondent Corporation under the freedom fighter category. A dealership agreement was entered into by the petitioner and the Corporation on 29.03.2010. The agreement provided the terms and conditions and also stipulated the mechanism for dispute resolution through Arbitration under Clause 66 of the agreement. Pursuant to entering into a dealership agreement, the petitioner was permitted to run a petrol bunk and the petroleum products were supplied by the respondent Corporation.

3. A show cause notice came to be issued by the petroleum Corporation on 05.07.2013 to the petitioner and by quoting various incidents, the petitioner was informed that he has violated Clause Nos.34, 42, 44, 45 and 55k of the dealership agreement. The petitioner was asked to give his explanation and to show cause as to why the dealership agreement should not be terminated.

4. The petitioner gave his reply on 20.07.2013 to the show cause notice. The dealership agreement came to be cancelled through the impugned order passed by the Petroleum Corporation on 27.9.2013. The same has been put to challenge by the petitioner.

5. The second respondent has filed a counter affidavit in both the writ petitions. The main ground that has been raised by the second respondent is that there were sufficient materials to show that the petitioner had parted with the dealership to third parties without the consent of the Corporation and the same is in violation of the terms and conditions of the agreement. That apart, a preliminary objection has also been taken with regard to the maintainability of the writ petition in the light of the specific clause in the dealership agreement which provides for the resolution



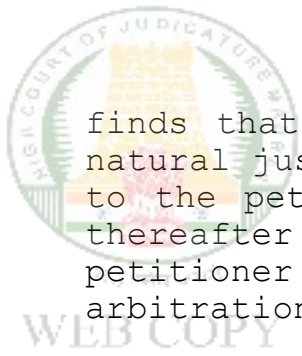
of the disputes through the process of arbitration.

6. The learned counsel for the petitioner submitted that the petitioner had suffered serious health issues and he became very sick due to injuries in the spinal cord. Therefore, the petitioner being bedridden, executed a Power-of-Attorney in favour of one Ramasamy for looking after the day-to-day affairs of the business. It is further submitted that the said Ramasamy had fabricated documents as if the petitioner entered into a partnership with him by forging the signature of the petitioner. Accordingly, a complaint was given to the police by both the parties and on completion of investigation, a final report was filed before the learned Judicial Magistrate No.II, Dindigul to the effect that the so called partnership agreement was a fabricated document. Therefore, the learned counsel submitted that the cancellation of the dealership agreement based on a forged document is not sustainable.

7. The learned counsel for the petitioner further submitted that the other Power-of-Attorney documents executed by the petitioner for running the outlet was done when the petitioner was bedridden and subsequently it was also cancelled. Therefore, without there being any serious complaint against the petitioner, who had always ensured the quality of supply made in the outlet and had made the payments promptly to the Corporation, the dealership agreement ought not to have been cancelled. The learned counsel for the petitioner concluded his arguments by submitting that even in a case where an arbitration clause is provided under the agreement, that does not in any way prevent this Court from exercising its jurisdiction under Article 226 of the Constitution of India in an appropriate case and the present case falls under this category.

8. Per contra, the learned Standing Counsel appearing on behalf of the Petroleum Corporation submitted that the documents that have been filed before this Court by way of typeset of papers by the respondents clearly shows that the petitioner has parted with the dealership by executing Power-of-Attorney in favour of third parties. The learned counsel submitted that there is no necessity to go into the criminal case instituted against the petitioner by one Ramasamy and what is important is to see if the petitioner had executed documents permitting the third party to run the outlet. If the same has been done, it is in total violation of the various clauses contained in the agreement and hence it is well within the powers of the Corporation to terminate the agreement.

9. The learned counsel further submitted that the dealership agreement specifically provided for resolution of disputes through arbitration and the petitioner is bound by the said condition since he is a party to the agreement. The learned counsel submitted that this Court will exercise its extra-ordinary jurisdiction under Article 226 of the Constitution of India only in cases where it



finds that there has been a patent violation of the principles of natural justice. In the present case, a show cause notice was issued to the petitioner and the petitioner submitted his reply and only thereafter the dealership agreement was cancelled. Therefore, if the petitioner is aggrieved by the same, he can only resort to arbitration and the present writ petition is not maintainable.

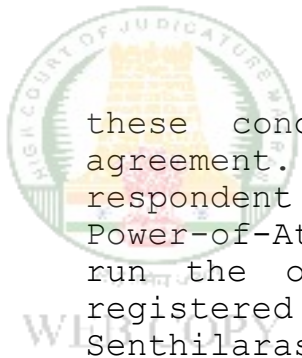
10. This Court has carefully considered the submissions made on either side and the materials available on record.

11. It is an undisputed fact that the petitioner was granted dealership under the freedom fighter category. Clause 34 of the dealership agreement specifically provides that a dealer should not part with the dealership or allow any other person to run the outlet except with a specific permission in writing from the Corporation. Clause 44 of the agreement also specifically provides that the retail outlet should be personally supervised by the dealer and under no circumstances, it should be done through any other person, firm or body. Clause 55 deals with the power of the Corporation to terminate the agreement if the dealer commits breach of the covenants contained in the agreement. The dealership agreement also provides for dispute resolution through arbitration at Clause 66 of the agreement.

12. A preliminary objection has been raised by the learned Standing Counsel on behalf of the respondent Corporation with regard to the maintainability of the writ petition in the light of an arbitration clause available in the dealership agreement. It is now a settled law that the mere availability of an alternate dispute mechanism like arbitration by itself cannot be a bar for this Court to exercise its jurisdiction under Article 226 of the Constitution of India. This Court can always exercise its jurisdiction in an appropriate case where it is found that there is a patent violation of the principles of natural justice. Alternative remedy is only a self-imposed restriction and it is not an absolute bar for this Court to exercise its jurisdiction under Article 226 of the Constitution of India. It is not necessary to burden this order with case laws in this regard in view of the settled law through a catena of decisions.

13. In view of the above, this Court has to see whether the present case falls under the extra-ordinary category where this Court must exercise its jurisdiction under Article 226 of the Constitution of India.

14. This Court, on going through the various clauses in the dealership agreement and which has been specified supra, finds that there is an express bar for the petitioner to run the outlet through anyone else and the petitioner, as a dealer was expected to personally supervise the retail outlet. The petitioner is bound by



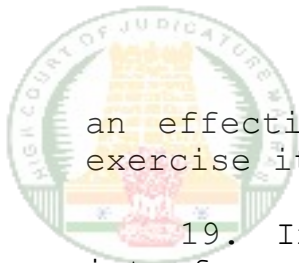
these conditions since the petitioner is a signatory to the agreement. It is seen from the documents filed on the side of the respondent Corporation that the petitioner had executed a registered Power-of-Attorney dated 13.08.2010 in favour of one Sivasakthivel to run the outlet. Similarly, the petitioner has also executed a registered Power-of-Attorney dated 25.8.2010 in favour of one Senthilarasi to run the outlet. That apart, the petitioner had also executed a registered Power-of-Attorney dated 9.12.2011 in favour of one Ramasamy to run the outlet. The petitioner does not seriously object these documents and the only explanation given by the petitioner is that he was bedridden and hence he was forced to run the outlet with the help of the person in whose favour the Power-of-Attorney was executed.

15. If really the petitioner had faced such a problem, the agreement itself provides that the petitioner can get the necessary permission from the Corporation in writing and part with the running of the outlet through another person. The petitioner should have informed the Corporation about the difficulties faced by him due to his ill health and instead, the petitioner, on his own, proceeded to execute Power-of-Attorneys in favour of various persons. This was found to be in violation of the terms of the agreement which resulted in the termination of the agreement.

16. This Court does not want to go into the criminal case, where the partnership deed that was put against the petitioner was found to be a fabricated document. Dehors this partnership deed, the above documents clearly indicates that the outlet was run through third parties during the relevant point of time. The cancellation of those documents at a later point of time, will not in any way justify the act of the petitioner in running the outlet through third parties. It must be borne in mind that the petitioner was allotted the dealership under the freedom fighter quota and hence the petitioner should have strictly followed the terms and conditions of the agreement.

17. The petitioner was issued with the show cause notice by the Corporation and his explanation was sought for and only thereafter, the dealership agreement was terminated. Therefore, this Court does not find any violation of principles of natural justice which would require the interference of this Court to exercise its jurisdiction under Article 226 of the Constitution of India.

18. On the facts of the present case, this Court does not find any ground to exercise its extra-ordinary jurisdiction. If the petitioner was aggrieved by the termination of the dealership agreement, he should have resorted to arbitration to redress his grievance. This is more so, since the petitioner had consciously agreed for the same by signing the dealership agreement. Therefore, the arbitration clause stipulated under the dealership agreement is



an effective alternative remedy, which enables this Court not to exercise its writ jurisdiction.

19. In the result, this Court does not find any ground to interfere with the impugned termination order issued by the respondent Corporation and accordingly both the writ petitions stands dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To
The Inspector of Police,
Ottanchathiram Police Station,
Dindigul.

+2 CC to M/s.C.JEGANATHAN, Advocate (SR-19854 & 19855[F] dated 22/06/2021)

**ORDER MADE IN
W.P(MD)Nos.15950 and 16940 of 2013
18.06.2021**

MJ(CO)
TR(25.06.2021) 6P 4C