



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.07.2021

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD) .No.654 of 2014

and

M.P. (MD) .Nos.1 to 3 of 2014

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M/s.Amutha & Co.,
Represented by its Partner,
A.L.Ramanathan,
Indian Oil Dealer,
249/1, Trichy-Chennai Bye Pass Road,
Thiruvanaikoil,
Trichy 620 005.

... Petitioner

Vs.

1.The Executive Director (Retail sale),
Indian Oil Corporation Limited,
G9, Ali Yavar Jung Marg,
Bandra (East),
Mumbai 400 051.

2.The Executive Director,
(Incharge TamilNadu and Pondicherry),
Indian Oil Corporation Ltd.,
Marketing Division,
Southern Region,
139, Mahathma Gandhi Road,
Chennai - 34.

3.Indian Oil Corporation Limited,
(Marketing Division),
Trichy Divisional Office,
"Triveni"3rd Floor,
B 35, Shastri Road,
Thillai Nagar, Trichy 620 018.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari calling for the records pertaining to the impugned show cause notice of the second respondent in NO.TCHDO:R:TRY- 2 dated 15.07.2013 and that of Impugned termination notice of the 2nd respondent in TCHDO:R:TRY-2 dated 24.10.2013 and quash the same.

For Petitioner

: Mr.R.Devaraj

For Respondents

: Mr.K.Muraleedharan
Standing Counsel



ORDER

This Writ Petition has been filed against the impugned show cause notice issued by the second respondent on 15.07.2013 and the subsequent impugned termination notice issued by the second respondent on 24.10.2013.

2. When the matter was taken up for hearing on 07.07.2021, this Court passed the following order:-

" It is seen from the records that the petitioner has moved O.A.No.897 of 2013 before the Principal Bench under Section 9 of the Arbitration and Conciliation Act, seeking for an interim injunction restraining the respondents from proceeding further with the termination notice, dated 24.10.2013 and forbearing the respondents from supplying Petrol and Diesel in the retail outlet.

2. An application under Section 9 of the Arbitration and Conciliation Act is more in the nature of an interim measure that is invoked by the party, before or during arbitral proceedings or at any time, after the making of the Award. Therefore, the intention of the petitioner was that, Arbitration proceedings are going to be initiated and therefore, as an interim protection, the application was moved before this Court. While so, the petitioner has also parallelly moved the present writ petition mainly with a view to get an interim order before this Court. Such a practice cannot be entertained, more particularly, where the agreement itself provides for resolving the dispute through arbitration proceedings.

3. During the course of hearing, the learned standing counsel appearing on behalf of the respondent Corporation submitted that the petitioner has abandoned the Retail Outlet and it has not been functioning for more than five years. The learned counsel also submitted that the Appeal filed by the petitioner against the termination notice was also rejected long back.

4. The learned standing counsel for the respondent Corporation shall get the correct particulars as to when the Appeal was rejected and for how many long years the Retail Outlet has not been operational.

5. Post this case for further orders on 13.07.2021 at 2:15 p.m."



3. Heard Mr.R.Devaraj, learned counsel appearing for the petitioner and Mr.K.Muraleedharan, learned Standing Counsel appearing for the respondents.

4. The learned Standing Counsel appearing for the respondent Corporation submitted that the appeal filed by the petitioner before the first respondent was not taken up for enquiry in view of the interim orders passed by this Court in this Writ Petition. The learned Standing Counsel further submitted that the petitioner has an efficacious alternative remedy under the agreement to refer the dispute for arbitration as provided under Clause 67 of the memorandum of agreement. The learned Standing Counsel appearing for the respondent Corporation further submitted that the retail outlet has not been functioning for a long time and the respondent Corporation has stopped supplying petroleum products. It is brought to the notice of this Court that the Original Application filed by the petitioner under Section 9 of the Arbitration Act was dismissed as withdrawn on 21.01.2014 after the filing of this Writ Petition.

5. In the considered view of this Court, the petitioner has to necessarily agitate their rights only in the manner provided under the agreement. Even in the impugned termination notice that was issued by the second respondent, it was specifically provided that the petitioner can file an appeal before the first respondent within a period of thirty days, if they are aggrieved by the termination notice. Accordingly, the petitioner has also filed an appeal before the first respondent within time on 18.11.2013. In view of the same, there shall be a direction to the first respondent to consider the appeal filed by the petitioner on 18.11.2013 and deal with the same on its own merits and in accordance with law after affording opportunity to the petitioner and the respondent Corporation and pass final orders within a period of six weeks from the date of receipt of a copy of this order.

6.This Writ Petition stands disposed of with the above directions.No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

tsg

NOTE: In view of the present lock down owing to COVID-19
<https://hcservices.ecourts.gov.in/hcservices/>



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

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+1 CC to M/s.K.MURALEEDHARAN, Advocate (SR-22784[F]dated 15/07/2021)

+1 CC to M/s.R.DEVARAJ, Advocate (SR-22786[F] dated 15/07/2021)

W.P. (MD) .No.654 of 2014

Dated :13.07.2021

RK (23.07.2021) 4P 6C