IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 8319 of 2020
and
W.M.P.No. 9977 of 2020

M/s. South Madras Gas Agency
13, Thiruvenkadam Street,
Raja Annamalaipuram
Chennai - 600 028
Rep. by its Partner Mr.Ramesh Krishnan ... Petitioner

vs.

1. The Executive Director
   Indian Oil Corporation Ltd.,
   Marketing Division
   139, Nungambakkam High Road,
   Chennai - 600 034.

2. Deputy General Manager (LPG Sales)
   500, Anna Salai,
   Teynampet
   Chennai - 600 018. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records culminating in the order dated 18.03.2020 bearing Ref.No.TNLS/382 passed by the first respondent and quash the same.

For Petitioner : Mr. Krishna Srinivasan
for M/s. S.Ramasubramaniam Associates

For Respondents : Mr. Abdul Saleem

O R D E R

The writ on hand has been filed questioning the validity of the penalty imposed by the respondent / Oil Corporation in proceeding dated 18.03.2020.

2. The petitioner was appointed as an LPG distributorship of East Coast Gas Company under Clatex (India) Ltd., and the distributorship Agreement was extended periodically and the last of such extension was done in the year 1998. The petitioner continues to be the LPG Distributor of the Respondent Oil Corporation.

3. On 20.12.2019, a show cause notice was issued to the second respondent in respect of certain complaints received from the customers on its web portal regarding charging of fee for checking domestic appliances though no such checking was ever done and checking of appliances was annually though it was required to be done once in 5 years only. The nature of allegations would constitute a major irregularity in terms of Clause 2.2.8 of the Marketing Discipline Rules 2018. The petitioner sent a detailed response on 04.01.2020 to the said show cause notice pointing out that the inspection of appliances was being done annually in the interest of the customers by the Indian Oil Corporation Ltd. No charges were collected from the customers without service being provided and the appliances checked only with the consent of the customers. Thus, the petitioner made a request to withdraw the show cause notice. However, a speaking order was passed by the second respondent on 09.01.2020 rejecting the reply putforth by the petitioner and imposing a fine of Rs.1,60,550.87 on the petitioner as per Clause 3.1 of the Marketing Discipline Guidelines 2018. The petitioner preferred an Appeal before the first respondent on 09.02.2020 and the grounds raised by the petitioner with reference to the violation of principals of natural justice was not considered by the Appellate authority and the appeal was rejected on 18.03.2020. Consequently, the second respondent sent a communication to the petitioner on 24.03.2020 that it had debited the balance amount of Rs.1,20,410.87 from the petitioner's account as 30 days period granted vide order dated 18.03.2020 had lapsed. The petitioner objected the said action of the second respondent and thereafter filed the present Writ Petition.

4. The learned counsel appearing for the petitioner mainly contended that the petitioner has not committed any such violation and further, the request made by the customers were provided to check appliances at the request of the customers and therefore, imposing penalty is improper. The respondents have violated the principles by not providing an opportunity to the writ petitioner in this regard.

5. The learned counsel for the petitioner relied on the prescription of services charges for LPG Distributors recovered from LPG Customers effective from 01.09.2019. As per the said circular, the total service charges to collect is Rs.236 and the petitioner has not collected any extra charges or otherwise and even on some occasion from service are made at the request of the customers. The appellate authority also has not considered the grounds raised and therefore, the Writ Petition is to be considered.

6. The learned counsel for the petitioner drew the attention of this Court that the petitioner is doing service for several years and they have not subjected to any such complaint during previous weeks and the said factum was also not considered by the respondents. For these reasons, the impugned orders are liable to be set aside.

7. The learned counsel appearing on behalf of the respondent Oil Corporation objected the contentions mainly on the ground that the allegation against the petitioner set out in the show cause notice is specified. The show cause notice unambiguously states that service charges for mandatory inspection of domestic installation to be done after cleaning the hotplates once in five years (irrespective of number of burners in stoves). Whereas the respondents have noted that service charges of Rs.200/- is collected every year from the customers for mandatory checking and customers have also stated that without carrying out inspection, they are being asked to pay the amount, for which dummy bill (without bill no., tax component, signature etc) is given and no check list for mandatory inspection is also given to the customers.

8. The learned counsel for the respondents relied on the receipt submitted by the petitioner. The receipt do not contain the tax component and not issued in accordance with the procedures prescribed by the Indian Oil Corporation. However, the petitioner has no clear answer in respect of the said receipt issued without any tax component. This apart, the petitioner - Agency, in their reply to the show cause notice, offered explanations for Paragraph Nos.1 and 3 of the show cause notice. However, in respect of the specific allegation in Paragraph No.2 of the show cause notice, no explanation was offered by the petitioner. The Competent Authority has considered this aspect also. It is needless to state that the petitioner, being an established LPG Gas Agency, cannot issue improper receipts to it's customers, without even collecting the tax component, which is mandatory under law and as per the

regulations of the Indian Oil Corporation. Thus, for the said violation also, penalty has been imposed. Show cause notice was issued to the petitioner and the petitioner submitted it's reply and considering the reply, the issues are decided by the respondents on merits and in accordance with law and therefore, this Court do not find any infirmity as such arrived at by the respondents.

9. Considering the arguments as advanced by the learned counsel appearing on behalf of the parties to the lis, the penalty imposed by the Oil Corporation is under challenge in this Writ Petition.

10. The scope of judicial review is to be confined with reference to the procedure adopted by the respondents for taking a decision but not the decision itself. No doubt, a show cause notice was issued on receipt of complaints from the customers regarding mandatory checking of appliances. The show cause notice reveals that service charges for mandatory inspection of domestic installation to be done after cleaning the hotplates, once in five years (irrespective of number of burners in stoves). Whereas, the Indian Oil Corporation has surprised to note that service charges of Rs.200/- is collected every year from the customers for mandatory checking and customers have also stated that without carrying out inspection, they are being asked to pay the amount, for which, dummy bill (without bill no., tax component, signature etc.,) is given and no check list for mandatory inspection is also given to the customers. The show cause notice reveals that the details of the customer complaints are also furnished to the petitioner and the name of the customers, their mobile numbers are also given. The petitioner submitted a reply and the said reply on 04.01.2020 while the petitioner has stated that the petitioners are conducting safety checks on the customer premises on yearly basis. Therefore, it is wholly incorrect to state that any amounts have been collected without conducted these checks. As per the circular issued by the Head Office, Marketing Division of the Corporation, it is mandatory to conduct an inspection of Domestic installation once in five years and the charges are also fixed. Though the period of 5 years is contemplated, there is no stipulation with regard to the number of safety checks that can be carried out. Therefore, in the interest of customers' safety and well being easily check has been conducted on need basis.

11. The reply further proceeds by stating that the petitioner is collecting Rs.200/- which has been fixed by the Corporation for safety interest charges. However, the petitioner

has not given a specific explanation with reference to the allegations in paragraph No.2 of the show cause notice dated 20.12.2019. The allegation is very specific that the service charges of Rs.200/- every year from the customers for mandatory checking and the customer have met a complaint without carrying out inspection, they are being asked to pay the amount and bills were issued without the tax component etc. Thus the allegations set out in the show cause notice has not been made out with specific reply.

12. The speaking order passed by the competent authority in proceeding dated 09.01.2020 also reveals that the disciplinary actions were proposed by invoking clause 2.2.8 and further, the speaking order contains the allegations reply and the reasons for imposing penalty. In this speaking order, there is a specifying finding in paragraph No.4 reads as under:-

> "4. Point 5- Epic complaints are being brought to your knowledge before closing the same at out end, which is not enhancing your image as well as that of the corporation, as could be seen from the complaints. Further, a complaint/mail received from Mrs. Devaki Venkatakrishnan directly addressed to you and a copy marked to us on 27.11.2019 clearly indicates that dummy bills are being given and Rs.200/- was collected without customer's consent or rendering service. It may please be noted from your reply to this complainant that you have admitted and expressed regret for having collected the amount, without rendering the services. The same complainant in her subsequent mail dated 24.12.2019 indicated that you have not stopped collecting the amount without rendering service, which may please referred to at your end. Hence, you contention that ePIC complaints are not within your knowledge and the customers are not taken up this issue with you is not acceptable.
>
> Whilst on the subject, we regret to state that even now we are receiving complaints regarding collection of Rs.200/- towards inspection charges annually and one such complaint received from Mr.C.Jayakumar, vide letter dated 24.12.2019 is attached herewith. It has

> also been brought to our notice by one of your customers that similar affected customer has written a compliant and published in “Mylapore Times” a local weekly recently.”

13. Therefore, the competent authority considered the allegations and also the explanations submitted by the writ petitioner and finally form an opinion and imposed penalty by invoking the rules.

14. The bill enclosed by the petitioner themselves at page 10 of the typed set of papers filed along with the Writ Petition reveals that The receipt was issued by the petitioner for Rs.200/- by stating as interest charges. As rightly pointed out by the respondents, there is no indication about the tax component and other aspects which are all statutory requirements and as per the regulations, the bills are contained all such components.

15. Regarding the withdrawal of the complaint by the customers as raised on behalf of the petitioner, the said withdrawal letters which are all enclosed in the typed set of papers would reveal that such letters were obtained after passing the speaking order by the competent authority. The speaking order imposing penalty was passed on 09.01.2020 and on such withdrawal, amounts were obtained after passing of such an order by the competent authority. Therefore, there is every possibility that the petitioner / Gas Agency by taking advantage of their position would be requested the customer to give such withdrawal letter and the said possibility cannot be ruled out by this Court.

16. All complaints received are to be dealt with in accordance with law. Certain complaints would result in penal consequence, if the allegations are established. Thus, withdrawal of the complaint at any point of time would not exonerate the offenders from the allegations. When certain violations are noticed by the Oil Corporations or a complaint is received, then the Oil Corporations are empowered to deal with the complaints and conduct enquiry as per the terms and conditions and with reference to the rules in force. Therefore, withdrawal of the complaint, at a later point of time by the consumers, would not affect the enquiry proceedings, which would have been done otherwise in accordance with the rules. The truthfulness of the allegations are to be gone into and the complaint is to be construed as an information provided to the Oil Corporations. It is not as if some consumers give complaints to the Oil Corporations and thereafter, at the instance of the dealers or otherwise, they withdrew the

complaints on misplaced sympathy or on any other consideration. Such withdrawal of the complaints would not prevent the Oil Corporations from conducting enquiry in order to cull out the truth regarding the allegations or information within the knowledge of the Oil Corporations. Therefore, the subsequent withdrawal by the consumers, in the present, would not affect the merits of the case and the reliance placed on the petitioner deserves no merit consideration. Such withdrawal may happen on account of the dealer-customer relationship or at the request of the dealers with the consumers or on any other considerations. What is required is the information/knowledge of any such allegation warranting an enquiry and the nature of the complaints involves penal consequence as per rules.

17. Perusal of the procedure adopted by issuing the show cause notice and providing an opportunity to the petitioner to submit their reply and thereafter passed a speaking order, this Court do not find any procedural infirmity as such.

18. The petitioner has raised a ground that the appeal order was passed without adopting the procedures and the grounds raised were not considered. This Court is of the considered opinion that based on the allegations set out in the show cause notice and by considering the explanations, the speaking order was passed by the original Authority. The issues and the allegations are relatable to the contractual obligation between the parties and the petitioner being an LPG Dealer is bound to follow the terms and conditions of the agreement and the rules. Therefore, once again, a separate elaborate adjudication akin to the original Authority need not be undertaken by the Appellate Authority. The Appellate Authority in the present case has considered the show cause notice, explanation submitted by the petitioner as well as the findings of the original Authority and disposed of the appeal. Thus, the procedures adopted by the Appellate Authority cannot be held as infirm. In view of the fact that the relationship between the petitioner and the Indian Oil Corporation is based on contract, if any other dispute arises with reference to the terms and conditions of the agreement, it is for the petitioner to redress the same in the manner agreed between the parties and in the absence of any such clause, then to approach the competent Civil Court of law.

19. The Authorities competent have considered the explanations submitted by the petitioner with reference to the allegations made and after scrutinizing the allegations in consonance with the terms and conditions of the agreement and the rules, arrived at a conclusion and passed the speaking order, which is impugned in this writ petition. Thus, this Court do not find any acceptable ground for the purpose of

exercising the power of judicial review under Article 226 of the Constitution of India.

20. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

vsg / krk

To

1. The Executive Director
   Indian Oil Corporation Ltd.,
   Marketing Division
   139, Nungambakkam High Road,
   Chennai - 600 034.

2. The Deputy General Manager (LPG Sales)
   500, Anna Salai,
   Teynampet
   Chennai - 600 018.

+1cc to M/s.S.Ramasubramaniam, Advocate, S.R.No.6388

+1cc to M/s.S.Abdul Saleem, Advocate, S.R.No.6615

W.P.No. 8319 of 2020
and
W.M.P.No. 9977 of 2020

KG(CO)
SU(25/02/2022)