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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-01-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.29414 of 2016

M/s.Rose Gas Agencies,
Represented by its Partner Joseph Benziger,
73, Medavakkam Main Road,
Adambakkam,
Chennai - 600 088.

.. Petitioner

vs.

1. The Executive Director,
Tamil Nadu State Office,
Indian Oil Corporation Marketing Division,
Southern Region,
Indian Oil Bhavan,
Mahatma Gandhi Road,
Chennai - 600 034.
2. The Deputy General Manager (LPG),
Tamil Nadu State Office,
Indian Oil Corporation Marketing Division,
Southern Region,
Indian Oil Bhavan,
Mahatma Gandhi Road,
Chennai - 600 034.
3. The Chief Area Manager,
Indane Area Office,
Chennai Area Office,
500, Anna Salai,
Chennai - 600 018.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the proceedings bearing No.TNL/S/218 dated 04.12.2015 of the first respondent herein and quash the same and consequently direct the respondents to refund the sum of Rs.12,36,070/- paid in advance to the respondent for the purpose of sending LPG Cylinder loads to the petitioner, the excess amount paid to the customers by way of excess TV amount than the SV amount, the excess amount incurred by the petitioner for carrying out the unloading of the



cylinders coming from the plant, the amount for the returned defective cylinders, Aadhar seeding charges and the other dues payable to the petitioner by the respondents along with interest for the delayed period.

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For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel for
Ms.AL.Ganthimathi.

For Respondents : Mr. R.Ravi
For [IOC]

O R D E R

The writ on hand has been filed questioning the validity of the order passed by the first respondent in proceedings dated 04.02.2015 and consequently direct the respondents to refund a sum of Rs.12,36,070/- paid in advance to the respondent for the purpose of sending to the writ petitioner etc.

2. The petitioner was appointed as a Distributor for Indane Gas by the respondent-Corporation on 05.03.1984. Later a revised Distributorship Agreement was entered into between the petitioner and the respondent-Corporation on 20th July 2001 when Mrs.S.Amala Benziger was also inducted as a partner in the aforesaid Gas Agency. The petitioner has been making complaints relating to corruption charges, bad behaviour of the Officials and supply of defective cylinders. The petitioner sent a representation dated 02.06.2014, which contains specific details of the defective cylinders supplied by the respondent-Company and the suspected bribery involved behind the defects in cylinders.

3. The respondent-Corporation in order to take revenge on the petitioner, sent the Field Officer for surprise inspections and Ms.Divya had certified 312 defective cylinders on 21.05.2014 and 217 defective cylinders on 04.06.2014 without inspecting/verifying or even seeing the defective cylinders. The respondent-Corporation illegally imposed two MDGs on the petitioner-Company only to take revenge against the respondent. One MDG was imposed on 04.11.2014 without conducting any enquiry, on the grounds that the delivery man went for delivery of cylinder on 02.06.2014 without weighing scale and the refill bookings, another MDG with huge penalty of Rs.1,64,813/- was levied on the petitioner the reason stated was that the delivery man of the respondent-Company had collected Rs.405/- against the cash memo of Rs.404.50 from the customer.



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4. Penalties were levied by the respondent-Corporation against the petitioner illegally on two consecutive days, only with the intention to terminate the distributorship of the petitioner-Company. The petitioner made a petition to the Chairman of the respondent-Corporation to appoint an Enquire Committee. However, the Enquiry Committee appointed was formed only to take revenge against the petitioner and therefore, the petitioner has not accepted the said Committee. However, it was found that during the enquiry that the complainant one Ms.Divya never attended any of the enquiries and no opportunity was provided to the petitioner to cross-examine the complainant. Thus, the respondent issued a show cause notice for termination of distributorship in proceedings dated 12.03.2015 and the petitioner approached this Court by way of a writ petition in WP.No.7455 of 2015 challenging the said show cause notice. The writ petition filed by the petitioner was dismissed holding that the respondent-Corporation has power to suspend the license and further the impugned order is only a show cause notice and the petitioner was granted with liberty to submit their explanations. However, the first respondent passed the further order in proceedings dated 04.12.2015 terminating the dealership of the petitioner.

5. The learned Senior Counsel appearing on behalf of the petitioner mainly contended that the termination of Distributorship was made based on vengeance. The petitioner made allegations against the authorities of the Indian Oil Corporation and in spite of conducting fair enquiry into allegations, the respondents have initiated action to terminate the Distributorship. Therefore, the order of termination is not valid.

6. The learned Senior Counsel appearing on behalf of the petitioner is of an opinion that a fair enquiry was not conducted. Merely based on the charges and the explanations and without conducting a detailed enquiry, the order of termination has been issued. Thus, the principles of natural justice has been violated.

7. Regarding the agreement between the petitioner and the respondents, the learned Senior Counsel contended that the writ petition can be maintained. The Hon'ble Supreme Court of India in the case of ABL International LTD. and Another Vs. Export Credit Guarantee Corporation of India LTD. and Others reported in (2004) 3 SCC 553 held that the writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record will not normally be entertained under Article 226 of the Constitution of India. However, it has been held that if the facts are required oral evidence can be taken.



8. The Hon'ble Supreme Court held that the Courts can very well go into the disputed facts and decide the objections if facts permit. Therefore, applying the said judgment, the facts involved in the present case are to be considered. The principles laid down by the Apex Court on the judgment has been subsequently followed in the case of Popatrao Vyankatrao Patil Vs. State of Maharashtra and Others reported in 2020 SCC Online SC 291, wherein, the Court has held as follows,

"11. No doubt that, normally, when a petition involves disputed questions of fact and law, the High Court would be slow in entertaining the petition under Article 226 of the Constitution of India. However, it is a rule of self-restraint and not a hard and fast rule. In any case, this Court in ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.¹ has observed thus:

"19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Gunwant Kaur [(1969) 3 SCC 769] this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact"

12. While summing up the conclusions in the aforesaid case, this Court concluded thus:

"27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule. (c) A writ petition involving a consequential relief of monetary claim is also maintainable.



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28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1].) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction."

9. The learned counsel appearing on behalf of the respondents / Indian Oil Corporation objected the submissions made on behalf of the petitioner by stating that the respondents have not decided to terminate the distributorship based on the letter sent by the petitioner to the Constitutional authority including Hon'ble Prime Minister of India. Even prior to that, there were many newspaper reports regarding LPG cylinder explosion and pertain to other allegations. The case of the petitioner was decided based on the violations of the clauses of the contract. Therefore, the writ petition need not be entertained.

10. The order of termination itself states that the Distributorship of the petitioner came to adverse notice for violation of certain clauses of Distributorship agreement and therefore show cause notice for termination was issued to the petitioner for violation of clause 11, clause 23(a), clause 24 and clause 27(n) of the contract. Since the clauses of the contract have been violated, the show cause notice was issued based on the explanation and by providing opportunity to the petitioner. If at all the petitioner is aggrieved, the petitioner has to resolve the same by invoking the arbitration clause, since arbitration clause was agreed between the parties. Therefore, the writ petition is liable to be rejected.

11. The learned counsel for the respondent relied on the judgment of the Hon'ble Supreme Court of India in the case of A.S.Motors private Limited Vs. Union of India and Others reported in (2013) 10 SCC 114, wherein, the Hon'ble Supreme



Court held as follows:

"7. It was argued on behalf of the appellant that the termination of the contract between the parties was legally bad not only because the principles of natural justice requiring a fair hearing to the appellant were not complied with but also because there was no real basis for the respondent Authority to hold that the appellant had committed any breach of the terms and conditions of the contract warranting its termination. We find no merit in either one of the contentions. The reasons are not far to see.

8. Rules of natural justice, it is by now fairly well settled, are not rigid, immutable or embodied rules that may be capable of being put in straitjacket nor have the same been so evolved as to apply universally to all kind of domestic tribunals and enquiries. What the courts in essence look for in every case where violation of the principles of natural justice is alleged is whether the affected party was given reasonable opportunity to present its case and whether the administrative authority had acted fairly, impartially and reasonably. The doctrine of audi alteram partem is thus aimed at striking at arbitrariness and want of fair play. Judicial pronouncements on the subject have, therefore, recognised that the demands of natural justice may be different in different situations depending upon not only the facts and circumstances of each case but also on the powers and composition of the tribunal and the rules and regulations under which it functions. A court examining a complaint based on violation of rules of natural justice is entitled to see whether the aggrieved party had indeed suffered any prejudice on account of such violation. To that extent there has been a shift from the earlier thought that even a technical infringement of the rules is sufficient to vitiate the action. Judicial pronouncements on the subject are legion. We may refer to only some of the decisions on the subject which should in our opinion suffice.

15. Coming to the case at hand we find that the termination of the contract between the parties was preceded by a show-cause notice issued to the appellant and a hearing provided to it by the competent authority. The show-cause notice issued to the appellant on 24-11-2006 enclosed with it all



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relevant documents including the complaints received against the appellant from various quarters and a copy of the report submitted by the agency engaged for verifying the allegations against the appellant. The appellant had unsuccessfully challenged the show-cause notice in Writ Petition No. 6338 of 2006 before the High Court. The High Court had while refusing to interfere in the matter directed [A.S. Motors (P) Ltd. v. Central Bank of India, WP No. 6338 of 2006, order dated 13-12-2006 (MP)] the appellant to submit a reply to the notice. The appellant had accordingly appeared before the authority on 12-1-2007, submitted its written statement and was heard in support of its case that it had not committed any default. In the reply or at the hearing, the appellant had not alleged any mala fides, bias or prejudice against the officers dealing with the matter or the agency employed by them for collecting and verifying the facts. Principles of natural justice thus stood substantially complied with.

16. The contention that the appellant should have been given an opportunity to cross-examine the persons whose statements had been recorded by the agency in the course of its inquiry and verification was rightly rejected by the High Court keeping in view the nature of the inquiry which was primarily in the realm of contract, aimed at finding out whether the appellant had committed any violation of the contractual stipulations between the parties. Issue of a show-cause notice and disclosure of material on the basis of which action was proposed to be taken against the appellant was in compliance with the requirement of fairness to the appellant who was likely to be affected by the proposed termination. Absence of any allegation of mala fides against those taking action as also the failure of the appellant to disclose any prejudice, all indicated that the procedure was fair and in substantial, if not strict, compliance with the requirements of audi alteram partem. The first limb of the challenge mounted by the appellant, therefore, fails and is hereby rejected."

12. In the above judgment, a specific contention was raised regarding the violation of the principles of natural justice. However, the Court found that regarding breach of terms and conditions of the contract provides rights to the parties to initiate action. Therefore, what the Courts in essence look for in any every case, where violation of principles of natural justice is alleged is whether the affected



party was given reasonable opportunity to present its case and whether the administrative authority had acted fairly, impartially and reasonably.

13. In this context, let us now consider the clauses of contract invoked by the respondents/Indian Oil Corporation, namely, clause 11, clause 23(a), clause 24, clause 27(n), which are as follows:

"Clause 11 :- The distributor shall faithfully and diligently observe and carry out all directions, orders, terms and conditions as may be issued by the Corporation, from time to time and has may be contained in the Corporation's 'Indane manual' and any amendments or modification as may be made by the Corporation thereto from time to time. The distributor hereby confirms that he has received the copy of the Indane manual and the general directions as circulated by the Corporation on date of this agreement and agrees to abide by and perform the same.

Clause 23(a): "The distributor undertakes faithfully and promptly to carry out, observe and perform all directions and order or rules made from time to time or its representative for the proper carrying on the distributorship of the Corporation".

Clause 24 : "The Corporation by which officers, representative or servants shall have at all times and in any circumstances free and unrestricted access to all premises used in connection with the business of the distributor and to inspect and take account of all products in his possession and of all implements, tools, furniture, fittings and/or other property entrusted to the distributor by the Corporation".

Clause 27(n) : "Notwithstanding anything to the contrary herein contained, the Corporation shall also be at liberty at its entire discretion to terminate this agreement forthwith upon or at any time after the happening of any of the following events, namely:-

If the distributor shall either by himself or by his servants or agents commit or suffer to be committed any act which, in the opinion of State Office in-charge of the Corporation for the time being at Chennai in the state of Tamil Nadu of the Corporation, whose decision in that behalf shall be final, is prejudicial to the interest or good name of



Corporation or its products; the state office in charge shall not be found to give reasons of such decision".

14. Certain clauses are broader enough to cover the varieties of allegations against the Distributorship, more specifically, clause 27(n) contemplates that the respondent/Indian Oil Corporation shall be at liberty at its entire discretion to terminate the agreement forthwith upon or at any time after the happening of any of the following events, namely, if the distributor shall either by himself or agents commit or suffer to be committed any act which, in the opinion of State Office in-charge of the Corporation for the time being at Chennai in the State of Tamil Nadu of the Corporation, whose decision in that behalf shall be final is prejudicial to the interest or good name of Corporation or its products. The State office in charge shall not be found to give reasons of such decision.

15. The above clause is sufficient enough to cover numerous nature of allegations and if the Corporation found that the Dealership causes greater inconvenience or causing dis-reputation to the Corporation, they are at discretion to terminate the contract. Such broader clause has been agreed between the parties, in order to ensure that the Distributorship run in a smooth and customer friendly manner. It is a business agreement and therefore smooth functioning of Distributorship is of paramount importance and the customer relationships are of far more importance for the purpose of running the business in a peaceful manner.

16. With reference to the above clauses, the respondents/ Indian Oil Corporation issued a show cause notice to the petitioner. The petitioner was provided with an opportunity to submit their explanations. The explanations were considered by the authorities competent and they have formed an opinion that the petitioner has breached certain clauses. Therefore, the respondents have terminated the Distributorship. The reasons stated in the impugned order provides details regarding the manner in which the issues were considered based on the reply submitted by the writ petitioner. The explanations/objections submitted by the writ petitioner were elaborately considered. Therefore, the very contention of the petitioner that the principles of natural justice has been violated is incorrect.

17. While dealing with the terms and conditions of the contract, the parties are aware of the terms and conditions as they have signed the agreement. Therefore, the Court is bound to consider, whether the affected party was given a reasonable opportunity to present its case or not?; whether the administrative authority had acted fairly and reasonably or not?



18. It is not as if there must be a separate enquiry proceedings through any other agency. When the opportunity of hearing is provided and the explanations submitted by the petitioner are considered by the competent authorities, it would be sufficient to meet out the requirements of the principles of natural justice. Therefore, the contention of the petitioner in this regard deserves no merit consideration.

19. If at all the petitioner raise certain allegations against the authorities of the Indian Oil Corporation or in respect of the allegations made out against the petitioner, an elaborate adjudication is required, then such an adjudication cannot be undertaken in the writ proceedings. Therefore, the petitioner has to invoke the arbitration clause as agreed between the parties in the contract.

20. The respondents have raised an allegation of causing dis-reputation and dis-honor to the institution of Indian Oil Corporation Limited. Further, the petitioner created undue pressure on the officer in-charge of sales area from discharging normal duties and caused harassment to the officer. There are several other allegations raised and the respondent / Indian Oil Corporation formed an opinion that the petitioner had frequently caused inconvenience and disrupted the image of the Indian Oil Corporation. Further, the petitioner was non co-operative in all respects.

21. A mere sending of complaint would not be a ground for termination of contract. As pointed out the termination of the Distributorship was issued not merely based on the complaint sent by the petitioner to the Hon'ble Prime Minister of India and to other higher authorities. Allegations are subsequently raised in show cause notice issued to the petitioner and the petitioner has also submitted its explanations. Considering the explanations, the clauses in the agreement were invoked and accordingly, the order of termination of Distributorship was issued.

22. If at all the petitioner raise other allegations against the corporation or its officials, then the petitioner necessarily has to invoke the arbitration clause for elaborate adjudication of the issues, which cannot be done in the writ proceedings.

23. The power of Judicial Review of the High Court under Article 226 of the Constitution of India is to scrutinise the processes through which a decision is taken by the competent authorities in consonance with the provisions of the Statute and



the Rules in force, or not, but not the decision itself.

24. In the present case, the show cause notice was issued, certain allegations are raised against the petitioner and the petitioner submitted its detailed explanation. Thereafter, the competent authorities considered the explanation and taken a decision that the petitioner has breached certain terms and conditions of the contract. Accordingly, the respondents issued the termination of Distributorship.

25. This being the facts and circumstances, if at all the petitioner decides to adjudicate the issue elaborately, it is left open for the petitioner to invoke the arbitration clause for the purpose of resolving the issues. However, this court do not find any merit for interference in respect of the order of termination of Distributorship issued by the respondents.

26. Accordingly, the Writ Petition stands dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

Svn/Jeni

To

1. The Executive Director,
Tamil Nadu State Office,
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2. The Deputy General Manager (LPG),
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3. The Chief Area Manager,
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+1cc to M/s.AL.Ganthimathi, Advocate, S.R.No.4389

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SU(07/02/2022)