



W.P. No.8468 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

W.P. No.8468 of 2017 and
W.M.P. Nos.9263 and 9264 of 2017

M/s.Nagalakshmi Agencies
Represented by its Proprietor
J.Prakash
HPCL Retail Outlet, RS No.218/9b1
Anathapuram Cross Road
Villupuram Gingee Highway
Nemur Post, Vikravandi Taluk
Villupuram 605 203

. . . Petitioner

Vs

- 1.The Senior Regional Manager
Hindustan Petroleum Corporation Ltd.
2nd Floor, MDSR Enclave
Bharathidasan Road
Cantonment, Trichy - 620 001
- 2.The Manager, Vigilance
Hindustan Petroleum Corporation Ltd.
3rd Floor, Thalamuthu Natarajar Maligai
Gandhi Irwin Road, Egmore, Chennai
- 3.The Area Sales Manager
Villupuram Sales Area
Hindustan Petroleum Corporation Limited
Thiruvengadam & Co Bank,
Villupuram
- 4.The District Revenue Officer
Collector Office Campus
Villupuram District

. . . Respondents



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PRAYER : Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus, to call for the records on the file of 1st respondent dated 27.03.2017 bearing reference:TRO/LEG/RET and to quash the same as illegal and further direct the 4th respondent the District Revenue Officer, Villupuram, to take possession of the inflammable substance handed over vide the proceedings dated 09.02.2013.

For Petitioner : Mr.V.Lakshminarayanan

For Respondents : Mr.M.Vijayan of
M/s.King & Patridge for R1 to R3
Mr.P.Sathish, AGP for R4

ORDER

This writ petition has been filed challenging the termination notice issued by the first respondent.

2. The petitioner is the owner of the property and availed Dealership from the respondents Corporation. The petitioner is operating the petrol bunk without any violation. At this juncture, on 19.02.2013, Manager vigilance of Hindustan Petroleum Corporation, Chennai visited the bunk. During his visit he had noticed that the bunk had been closed from 05.02.2013 and the stocks were below dead stock level and made an observation that the wife of the petitioner made a statement that 4 KL MS and 4 KL HSD was supplied to a nearby



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Essar petrol pump and Tar Plant and therefore, the first respondent has issued a show cause notice.

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3. It is the contention of the petitioner that, on the date of inspection on 18.02.2013, nothing has been found against the petitioner. Similarly, on 29.03.2013, nothing was found against the petitioner. Again on 31.03.2013, an inspection has been conducted by the same officer and found that as if the petitioner was in possession of 4,000 litres of excess petroleum products. Accordingly, a show cause notice has been issued. Thereafter, the dealership has been terminated on 27.03.2017 and it is not the case of the respondent that there was any adulteration in the petrol bunk, whereas, the contention of the petitioner is that 4000 litres of petroleum products found in the bunk was handed over by the Civil Supplies CID for safe custody, which has been properly explained and it has not been considered. The other contention of the writ petitioner is that on the date of alleged inspection on 29.03.2013, signature of one V.Krishnan is said to have been obtained. In fact no such person was working under the writ petitioner. The inspection report has been created only for the purpose of allotting the dealership to some other person. Hence the impugned order was passed without considering the entire materials and the representation and the explanation of the petitioner has not been considered. Hence



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the same is sought to be quashed.

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4. In the counter, it is the stand of the respondent that it was brought to the notice of the HPCL that 3886 litres of Motor Spirit (MS) and 3842 litres of High Speed Diesel (HSD) seized by the Inspector of Civil Supplies was handed over to the petitioner and that the said products were unloaded in the outlet by the petitioner. In the above factual aspect, show cause notice has been issued, which has been replied and has been accepted. However, on 31.03.2013, another inspection was conducted and it was found that there was excess stock of 2476 litres of Motor Spirit, which is serious misconduct and therefore, the sale in the outlet was suspended forthwith. Therefore, after issuance of the show-cause notice, termination order has been passed.

5. Learned counsel appearing for the petitioner would submit that on 18.02.2013 during the inspection, nothing has been found against the petitioner. Similarly, on 29.03.2013, nothing was found against the petitioner. Immediately two days thereafter, another inspection was conducted by the same officer and documents have been created as if there was excess quantity of petroleum products in the premises and the so called inspection report signed by one V.Krishnan, is also created



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only for the purpose of allotting dealership to some other person. He also drew the attention of this court to show that no such person was working under the petitioner in the petrol bunk. To substantiate the same, the attendance report is also produced.

6. Per contra, it is the contention of the learned counsel appearing for the respondents that during the inspection, excess quantity of petroleum products has been found and after issuing show cause notice, termination has been ordered.

7. In response to the above contention, learned counsel appearing for the petitioner would submit that the excess products kept in the petrol bunk, as per the direction of the Civil Supplies CID, is nothing to do with the inspection conducted on 31.03.2013. Hence the petitioner has approached this court.

8. Heard both sides and perused the entire materials available on record.

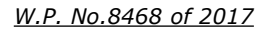
9. It is not in dispute that the land in question was owned by the petitioner and that the petitioner was granted dealership originally. The issue started first time on 18.02.2013 wherein inspection was said to



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have been conducted by the respondent on the ground that there were some excess quantity of motor spirit and a show cause notice has been and the same has been replied and it has been accepted later by the respondents. Another inspection was conducted on 29.03.2013. However, no excess products have been noted by the respondents and within two days thereafter, again an inspection is said to have been conducted by the very same officer, who conducted the earlier inspections, in the presence of the so-called staff of the writ petitioner, namely one V.Krishnan and recorded as if there was excess stock of 2476 litres of Motor Spirit.

10. In this regard, the documents produced in the typed set of papers indicate that the Report has been prepared by the Vigilance Manager, who said to have conducted inspection on 31.03.2013 to show that as if one staff of the petitioner was present at site. The learned counsel appearing for the petitioner has brought to the notice the Attendance Register certified by the Labour Officer to show that no such person was working in the dealership and it is also not disputed by the respondents that previously there was excess quantity found which was kept in the premises and it is later accepted that it was handed over by the Civil Supplies CID for safe custody. Having found that inspection has been conducted on 18.02.2013 and again on 29.03.2013



11. It has been noted that the petitioner has also given proper explanation narrating all the factual aspects, which resulted that excess quantity was found in the premises. In the termination order, there was no reason, whatsoever, was given to show that the explanation has been properly considered. In such view of the matter, when there was no allegation of adulteration and excessive of the products found in the premises, which is also satisfactorily explained to the effect that the same has been handed over by the Civil Supplies CID, Cuddalore for safe custody, the manner in which inspection report prepared with the person who was not working in the petrol bunk of the petitioner at the relevant point of time, this court is of the view that the impugned inspection report warrants interference by this court and the same is liable to be set aside.



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12. It is also stated by the respondents that the dispute arose out of the contract. It is the contention of the respondents that when there is an arbitration clause, any issue arose out of the contract has to be referred at the first instance to arbitration, but in this case, such plea was not taken at the first instance. In such view of the matter, the same cannot be the ground to dismiss the writ petition.

13. Considering the factual aspects and the circumstances of the case, the impugned order of the first respondent is set aside. Accordingly, the writ petition is allowed. However, there is no order as to costs. Consequently, the connected writ miscellaneous petitions are closed.

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Index : Yes / No
Speaking/non speaking order
Asr



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