



W.P.No.1745 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.1745 of 2021
and WMP. No.1946 of 2021**

K.Bharathi

... Petitioner

Vs.

1. The State Commissioner
office of the state Commissioner
for persons with disabilities,
Lady Willingdon College,
Campus kamarajar Salai, Chennai 600 005.

2. J.Poornachandran

3. The Chief General Manager
Hindustan petroleum Cororation Limited.,
Thalamuthu Natarajan Building,
4th floor, No.8 Gandhi Irwin Road,
Egmore, Chennai 600 008.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari Call for the records pertaining to the order dated 15.12.2020 in case No. 17 of 2020 in File No. 1243 / L.O.2 / 2020 Passed by the 1st Respondent and quash the same.



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For Petitioner : Mr.K.Chandrasekaran
For Respondents : Mr.U.Bharanidharan, AGP R1
Mr.N.Fidelia R2
Mr.Vijayameganath R3
For M/s.AAV Partners

ORDER

This petition has been filed seeking to quash the order passed by the first respondent dated 15.12.2020 in Case No.17 of 2020.

2. It is the case of the petitioner that he is a partner in M/s.Sri Gurusanthi Agencies, which is a registered partnership firm. In the year 1999, the 3rd respondent had given the dealership to run the petrol bunk in favour of the second respondent and he had conducted the same as sole proprietorship. While this being so, due to his health problem, the second respondent had approached the petitioner to join in the business of M/s.Sri Gurusanthi Agencies as partnership deed dated 04.06.2019, having its office at No.9, GST Road, Sothupakkam, Melmaruvathur, Chennai and was executed between the petitioner and the second respondent and the same



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was registered before the Registrar of Firm on 04.07.2019. subsequently, there was dispute between the petitioner and the second respondent and hence, the second respondent, on 26.11.2019, approached the Bank to freeze the operation of the firm business. Therefore, the petitioner filed a suit in O.S.No.22 of 2020 before the District Court, Chengalpet against the second respondent and others for permanent injunction. In view of the continuous illegal acts of the second respondent, the outlet is closed from 26.11.2019 and 13.01.2020 respectively.

3. In the meanwhile, the second respondent had issued legal notice to the petitioner on 07.12.2019 to dissolve the partnership deed and the petitioner sent reply on 13.12.2019. Since the second respondent acting unilaterally as against the partnership deed, contrary to the clause, which directly affects the rights of the petitioner, therefore, she invoked the Arbitration Clause 12 of the Partnership deed and issued notice dated 05.03.2020 to appoint an Arbitrator to resolve the dispute. That being so, the petitioner received notice from the first respondent on 21.07.2020 directing



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him to submit reply. After receiving of the said notice, a detailed reply in the form of counter affidavit is filed along with supporting documents. The first respondent, without going into the merits of the contention, passed the present impugned order dated 15.12.2020 directing the petitioner herein to declare the dissolution of the partnership at Will entered into between the petitioner and the first respondent and to deliver the dealership firm to the second respondent herein. Aggrieved against the said order, the present writ petition has been filed.

4. The learned counsel appearing for the petitioner submitted that the order passed by the first respondent is without jurisdiction and it is purely civil dispute between the petitioner and the second respondent, which was approved by the third respondent. If the second respondent has any grievance, he has to approach the Arbitrator or before the competent civil Court for getting appropriate remedy. On the contrary, he has filed a complaint under the Rights of person with Disabilities Act, 2016 which is not sustainable one. However, the first respondent have no jurisdiction to



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issue a direction to the petitioner for dissolution of the partnership firm. The very same issue was came up for consideration before the Hon'ble Apex Court reported in *2010 (4) SCC 18* wherein the Hon'ble Apex Court has categorically held that the Commission have no power to issue any mandatory or prohibitory injunction or other interim directions under Right of persons with Disabilities Act. Hence, the learned counsel prays that this Court may allow the writ petition.

5. The first respondent has filed their counter and the relevant paragraph is extracted hereunder:

"8. With reference to the averments made in Grounds paras (a) – (e) it is humbly submitted that the State Commissioner has following powers under 82 of Rights of Persons with Disabilities 2016:

(1). The State Commissioner shall, for the purpose of discharging their functions under this Act, have the same powers of a civil court as are vested in a court under the code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:



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(a) Summoning and enforcing the attendance of witnesses;

(b) requiring and enforcing the attendance of witnesses;

(c) requisitioning any public record or copy thereof from any court or office;

(d) receiving evidence on affidavits; and

(e) issuing commissions for the examination of witnesses or documents.

(2) Every proceeding before the State Commissioner shall be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860) and the State Commissioners shall be deemed to be a Civil Court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."

6. The learned counsel appearing for the second respondent submitted that as per Section 43 of the Indian Partnership Act, a notice has been issued to the petitioner and the same is sufficient for dissolution of the partnership deed. The first respondent has rightly passed an order, which cannot be interfered with by this Court.



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7. The learned counsel for the third respondent submitted that admittedly the license was granted in favour of the second respondent at the relevant point of time. Subsequently, the second respondent entered into partnership deed with the petitioner and the same was registered before the Registrar of Firms. Subsequently, a dispute arose between the partners and the same will be resolved either before the Arbitrator or before the competent civil forum. The first respondent have no power to issue such a direction to the petitioner for dissolution of the partnership deed and submit the accounts.

8. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondents and perused the materials available on record.

9. The facts of the case are not in dispute. Admittedly, the



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dealership license was granted in favour of the second respondent. Pursuant to which, the second respondent was running a petrol outlet in the above mentioned address. Due to financial crisis, the second respondent entered into partnership deed with the petitioner and the same was also registered. Thereafter, there was a dealership agreement entered into between the petitioner and the second respondent which was approved by the third respondent. These facts are not in dispute. There was a dispute between the petitioner and the second respondent for running the outlet, for which, the second respondent issued a legal notice on 07.12.2019 under Section 43 of the dissolve the partnership firm and the reply was also sent by the petitioner on 13.12.2019. Thereafter, the 2nd respondent made a complaint before the first respondent. Pursuant to which, the present impugned order has been passed.

10. In this background, it is relevant to note that the decision rendered by the Hon'ble Apex Court as stated supra is extracted hereunder:

"18. It is evident from the said provisions, that neither



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the Chief Commissioner nor any Commissioner functioning under the Disabilities Act has power to issue any mandatory or prohibitory injunction or other interim directions. The fact that the Disabilities Act clothes them with certain powers of a civil court for discharge of their functions (which include the power to look into compliants) does not enable them to assume the other powers of a civil Court which are not vested in them by the provisions of the Disabilities Act."

11. The above judgment will squarely apply to the facts of the present case. In view of the settled position of law, the order passed by the first respondent is hereby quashed.

12. In the result, the Writ Petition is allowed. However, liberty is granted to the parties to work out their remedy in the manner known to law. No costs. Consequently, connected Miscellaneous Petitions are closed.

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NCC: Yes / No



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Index : Yes / No

Speaking Order : Yes / No

M.DHANDAPANI,J.

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To

The State Commissioner
office of the state Commissioner
for persons with disabilities,
Lady Willingdon College,
Campus kamarajar Salai, Chennai 600 005.

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